

THE IMPLICATIONS OF CHINA'S APPLICATION OF ITS VIEWS ON
SOVEREIGNTY TO INTERNATIONAL RELATIONS

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Abstract

Despite efforts to codify a new conception of sovereignty limited by international law and norms, China has retained the traditional view of sovereignty that gives it absolute control within its territory and prohibits all external interference. Given China's growing role as a power in the region and world, it is important to comprehend their views in order to understand how they will factor into disputes with other nations and organizations and potentially predict when they may occur. In this thesis, I will examine how China applies their conception of sovereignty to its dealings with other nations, both when they challenge China's sovereignty and in how China goes about negotiating with them, and international organizations, specifically when these organizations create policies that may infringe on a nation's sovereignty.

Given the growing number, size and importance of international organizations, it is important to understand China's reaction to them when they pursue policies to restrict sovereignty through international governance. Chapter 1 examines China's reactions to three growing trends of international governance spurred by these organizations and finds that even if they run counter to China's views China does not use its position in these organizations to counter these trends. Next I examine how the central role of the principle of non-interference sovereignty and how China applies this both when China perceives its sovereignty threatened and in its negotiations. Chapter 2 compares how China handles issues with transboundary resources, which they consider a sovereign matter, to other nations and finds that they use the principle of irredentism to lay claim over exclusive rights to these resources. Chapter 3 examines what implications China's application of its non-interference policy may have in negotiations by looking at the

relationship between China's foreign development aid to Africa and potential resources extraction and finds that because of their application of this principle, China feels justified in targeting its aid at resource-rich countries with the goal of extracting resources.

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INTRODUCTION

Setting the Stage

Despite the fact that sovereignty is one of the central pillars of the international order, there are different and often conflicting ways in which it is viewed. This conflict stems from the redefinition that some nations have attempted to make to sovereignty in the post-World War II era. Many of nations in the developing world, including China, subscribe to the traditional view of sovereignty which imbues the state with absolute power over its people and the right to conduct its affairs in any way it sees fit. This view also designates the state as the highest form of governance and thus makes it subject only to the laws which it creates. This view has been challenged by the redefinition that some nations have attempted to put on sovereignty. These nations, many of whom are Western nations, believe that sovereignty is limited by international norms. They've sought to codify these norms through international organizations and treaties to limit sovereignty when it conflicts with such things as human rights.

Because of its role as a leader among the developing nations, this has meant that China has become embroiled in many of the conflicts between these two views. The most visible of these conflicts is over shared resources, where China is embroiled in disagreements with a number of its neighbors. China's view that sovereignty grants them unlimited rights to these resources conflicts with the international norm that countries should come to an agreement on the disposition of resources such as rivers, oil fields and fishing grounds to ensure each gets their fair share. Another area where conflict has arisen over sovereignty is development aid. As China has become a larger provider of

development aid, it has brought them into conflict with Western aid programs, which place requirements on countries to liberalize their economy or to pass laws strengthening human rights. The Chinese, who do not place any requirements on their aid programs, view this as another example of Western interference. This has, however, lead many to believe that China's aid is undermining Western programs and that it has an ulterior motive of targeting the resources of developing countries. The final area where these two views have come into conflict is international governance. As the number and size of international organizations has increased, their power has also increased. China, amongst other countries, view some of the trends originating from these organizations as threats to sovereignty and has vocally opposed such trends as humanitarian interventions, yet again claiming that they're tools of Western imperialism.

As China grows more powerful, both economically and politically, it will increase the chances of further disputes arising from topics related to sovereignty. If Western leaders can understand the historical context of China's views and the manner in which they apply their views across a range of issue, it will allow them to anticipate China's moves and work to accommodate them when possible or thwart them when necessary.

Traditional Sovereignty

Traditional sovereignty arose from the Peace of Westphalia in 1648 in response to issues arising from the convoluted system of personal allegiances that had dominated feudal Europe and the need for consistent and predictable governance, particularly currency,

needed for growing worldwide trade.¹ The new system was based on three requirements: territory, monopoly on authority, and recognition. First, sovereignty was tied to geography and not personal allegiances.² Sovereign nations are required to have a claim over territory in order to govern. By making this a requirement, nation-states broke the hold of the allegiance system as the basis for governance. The second principle of sovereignty is that the government has the monopoly on the legitimate use of force within its territory.³ Cohen agrees with this, stating that the sovereignty means that there is no internal authority that is equal to or autonomous of the state that is capable of claiming jurisdiction or political rule.⁴ Along with this monopoly on force, the government is granted the exclusive domain to govern its people as it sees fit and to exploit all resources contained within its territory.⁵ Once these are established, the third principle of recognition comes into play. Each sovereign entity must recognize other sovereign entities claim over their territory and their right to govern that territory in order to receive recognition in kind.⁶ By granting a state recognition, each state recognizes that state's right to govern as they see fit and to abstain from interfering in their affairs.⁷ Thus sovereignty imparted on nations the principle role in international relations. Because of the adherence to the principles, there would be no power whose rulings could

¹ Cusimano, Maryann K. "Beyond Sovereignty: The Rise of Transsovereign Problems." In *Beyond Sovereignty: Issues for a Global Agenda*, 1-40. Boston: Bedford/St. Martins, 2000

² Ibid

³ Ibid

⁴ Cohen, Jean L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. New York: Cambridge University Press, 2012

⁵ Cusimano, Maryann K. "Beyond Sovereignty: The Rise of Transsovereign Problems." In *Beyond Sovereignty: Issues for a Global Agenda*, 1-40. Boston: Bedford/St. Martins, 2000

⁶ Ibid

⁷ Ibid

stand above that of a sovereign state.⁸ This central role of states in the international system was reinforced first by the export of the principle to Asian countries such as China and Japan and subsequently with the granting of independence to Imperial colonies and former Soviet States.⁹

Sovereignty Redefined

Despite its central role in the international system, some academics and policymakers question the absolute nature of sovereignty. Coleman cites that even the Western conception of sovereignty at its beginning was limited, with monarchs seeing themselves as answerable to God.¹⁰ As states became secular, theorists continued to perceive sovereignty as limited by developing international norms.¹¹ These international norms have continued and in some cases have been codified in international law. One example of this is transboundary resources, these are resources that are shared by two or more nations and can include rivers, fishing grounds and oil. The distribution of these resources was originally handled when nations would strike a deal, sometimes referred to as a “sovereignty bargain.”¹² This norm however, did not require states to share these resources. As a result, the United Nations worked to codify this norm by creating its

⁸ Cohen, Jean L. *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism*. New York: Cambridge University Press, 2012

⁹ Cusimano, Maryann K. "Beyond Sovereignty: The Rise of Transsovereign Problems." In *Beyond Sovereignty: Issues for a Global Agenda*, 1-40. Boston: Bedford/St. Martins, 2000

¹⁰ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013): 245.

¹¹ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013):245.

¹² Liftin, Karen T. "Constructing Environmental Security and Ecological Interdependence." *Constructing Environmental Security and Ecological Interdependence* 5, no. 3 (Summer 1999): 359

“equitable and reasonable use” policy.¹³ Another growing trend that has sought to limit sovereignty’s absolute nature is humanitarianism. Some have sought to limit sovereignty by defining the rights that a sovereign nation has to its citizens.¹⁴ By doing this, they hope to limit the absolute nature of a government’s control over its people in the sense that they would be required to protect their people from harm and could not subject them to it. One of the most outspoken defenders of this idea is Boutros Boutros-Ghali, who stated “Sovereignty is no longer absolute... Sovereignty must be kept in its place.”¹⁵ This norm, too, has received a codification by the United Nations in the concept of Responsibility to Protect. This concept provides the United Nations Security Council with the ability to take action in a country, regardless of their consent, to ensure the protection of the rights of its citizens.

These international norms and laws have sought to limit two of the sovereignty’s major principles. They remove some of the absolute power that is granted to the internal affairs of a sovereign nation, as well as define how they are to behave in regards to other nations. In addition, many of these laws are overseen by International Organizations, most notably the United Nations, which have no standing under traditional sovereignty. Because of this threat to sovereignty, some countries have worked to mitigate the power of these new laws or prevent their usage.

¹³ Wouters, Patricia. "The Yin and Yang of International Water Law: China's Transboundary Water Practice and the Changing Contours of State Sovereignty." *Review of European, Comparative & International Environmental Law* 23, no. 1 (April 2014): 69

¹⁴ Cusimano, Maryann K. "Beyond Sovereignty: The Rise of Transsovereign Problems." In *Beyond Sovereignty: Issues for a Global Agenda*, 1-40. Boston: Bedford/St. Martins, 2000

¹⁵ Ibid

China: Views on Sovereignty

Sovereignty, in the Western sense, was a concept that was imported to China, as well as many other Asian countries.¹⁶ However, after adopting this concept from the West, China has become one of the greatest defenders of the traditional conception of sovereignty.

Chinese leaders have even begun using it to combat the effects of globalization, though they have embraced globalization they have sought to control the socioeconomic effects domestically by using nationalism and sovereignty.¹⁷ They have worked to codify their views on sovereignty in their Five Principles of Peaceful Coexistence.¹⁸ These principle share many commonalities with those of Westphalian sovereignty. The principle require mutual respect for territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in internal affairs, equality of benefit and peaceful coexistence.¹⁹

There are two major historical factors that resulted in China adopting its current views on sovereignty in which the sovereign nation is not subject to higher power. The first was China's unrivaled power in relation to its neighbors. Unlike the countries in Europe, China had no major rivals for its power in Asia, in many cases its neighbors such as Korea, Tibet and Vietnam were vassal states.²⁰ As such, China never developed the concept of state-centric community because the centralized authority was never

¹⁶ Cusimano, Maryann K. "Beyond Sovereignty: The Rise of Transsovereign Problems." In *Beyond Sovereignty: Issues for a Global Agenda*, 1-40. Boston: Bedford/St. Martins, 2000

¹⁷ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013): 240.

¹⁸ Ibid: 240.

¹⁹ Ibid: 240.

²⁰ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013): 254.

challenged, so there was no need to share power.²¹ In addition to their undisputed role as the regional power, China's primary religions, Buddhism and Confucianism did not present challenges to the state's power. Buddhism focused mainly on enlightenment and in the few instances where monasteries did pose a threat, they were quickly wiped out.²² Confucianism went further by becoming one of the chief drivers China's world view.²³ These historical factors set the stage for China's current view on the role of sovereignty in the international system. As China has worked to integrate itself into the international system, it has continued to modify its views and present them to the world. This was seen most recently when China presented its "New Security Concept" which calls for cooperative means to deal with security issues without diluting the state-centric version of international relations.²⁴

Overview

In this thesis I will examine how China applies its conception of sovereignty in its dealings with other nations and with international organizations and whether this leads to disputes with countries who do not share its view. To do this, I will look at three areas of application, how China responds to perceived threats to its sovereignty from other nations, how respect for sovereignty plays into their negotiations with other nations and

²¹ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013): 251.

²² Ibid: 252.

²³ Ibid: 252.

²⁴ Yahuda, M. "The Evolving Asian Order: The Accommodation of Rising Chinese Power." In *Power Shift: China and Asia's New Dynamics*, edited by David L. Shambaugh. Berkeley: University of California Press, 2005.

how China responds to international organizations when they develop policies that may infringe on sovereignty.

Chapter 1 focuses on how China responds to international organizations when they pursue policies that could threaten sovereignty, particularly because of the requirement, based off of recognition, which prohibits interfering in the internal affairs of a sovereign nation. Since of World War II and at an increasing rate since the fall of the Soviet Union, international organizations have been created. These organizations have been taking an increasingly large role in international governance and some of the policies put forward by these organizations are viewed by China and other countries as attempts to infringe on sovereignty. Given China's prominent position in many of these organizations you would expect to see them work to counter these trends that it sees as a threat. To see if China is using their position in the United Nations and World Trade Organization to accomplish this aim, I will examine China's reaction to three major policy trends, humanitarian intervention, trade regulation and the creation of international courts. Since all three of these trends can have some negative effect on China's view of sovereignty, the expectation would be for China to oppose these trends. I will examine the manner in which China has responded in an attempt to determine if China is using their position to counter these trends.

In Chapter 2, I will examine how the Chinese respond to perceived threats to their sovereignty by other nations. Specifically I will examine the territorial aspect of sovereignty and the inherent right of a nation to the resources within its territory. My investigation will center on how the Chinese respond to other nations in instances where

they share resources and what role Chinese views on sovereignty plays in these disputes. These shared resources have become a major source of regional tension, despite the fact that most other nations that share resources have managed to come to an agreement that allows for a peaceful and somewhat equitable distribution. The resources I chose to investigate were shared rivers, fishing grounds, and oil. My investigation lead me to conduct a comparison between Chinese disputes with its neighbors and disputes between other nations over similar resources. Keeping in the mind the difference in power between China and many of its neighbors, I made sure that all of the comparison studies included a similar power dynamic to control for that issue.

The last chapter examines how China applies its views on sovereignty in its negotiations with other nations. Based on the requirement of recognition, a state should not interfere in how another sovereign nation governs itself. With this in mind, I will focus on what China considers to be allowable behavior when it sticks to its views on sovereignty by looking at China's development aid program in Africa. Their aid program has drawn accusations from other countries of being a mechanism for China to secure natural resources from developing nations, often at the detriment of that nation. This argument is countered by China by stating that Western aid programs are imperialistic because of their requirements liberalize trade, among other things, which Chinese aid doesn't require. To test whether Chinese aid programs are being used to target resources I will examine their aid packages to five African nations. I will look for two major criteria, the first is whether or not the country is resource-rich and the second is if resources were used directly to repay loans or as a source of collateral.

Chapter 1: Measuring China's Responses to International Organizations in regard to Sovereignty

Introduction

Beginning with the founding of the United Nations at the end of World War II, the number and size of international organizations has greatly increased. As this has occurred, more power has been invested in these organizations and they have begun taking on larger roles, in some cases these roles include overseeing the creation and maintenance of international laws and norms. This role as creators and maintainers has the potential to put these some of these organizations into conflict with countries who maintain a strict view on sovereignty, such as China. However, given China's goal of normalizing its relations with other nations and taking a larger role in both the region and on the world stage, China has either sought membership in these organizations, such as the World Trade Organization (WTO) or has worked to ensure their full participation in these organizations, as evidenced by their participation in the Security Council following the change in recognition from the Republic of China to the People's Republic of China in 1971.

Because of their views on sovereignty, however, China has not always viewed the actions of these organizations in a positive light. Actions such as non-consensual humanitarian interventions have caused China to accuse these organizations of interfering in the affairs of nations, in violation of their sovereignty. As such, China has taken actions ranging from simply condemning these violations of sovereignty to actively using their position or bodies within the organization to prevent these actions, the most recent instance of

which was when they joined Russia and other countries in blocking a UNSC intervention in Syria.²⁵ As China's power increases, their power within these organizations will increase, which will give them greater ability to challenge and actions they view as a violation of sovereignty. Therefore it is necessary to examine their current interactions with international organizations and the norms and laws they have created to fully understand their views on sovereignty, particularly which of these norms they consider a threat, in order to predict where disputes may occur in the future.

Literature Review

The concept of sovereignty, as created by the Peace of Westphalia, has driven international relations since its inception. The concept is based on a monopolization of political authority and breaks down into three major principles: (1) equality in law, (2) non-aggression and respect for an entity's territorial integrity, and (3) a right to non-interference in a polity's internal/domestic affairs.²⁶ However, the Western conception of sovereignty has always been viewed as limited and has in recent years been redefined. Coleman illustrates this initial limitation on sovereignty by explaining how the actions of many Western sovereigns were limited by the perception that they were answerable to God and the church, though as time went on, theorists secularized these limitations by creating the concepts of international law.²⁷ Over the course of the 1990s, however, many Western countries sought to create a new conception of sovereignty the no longer

²⁵ Jafarova, Esmira. "Solving the Syrian Knot: Dynamics within the UN Security Council and Challenges to Its Effectiveness." *Connections* 13, no. 2 (Spring 2014): 44.

²⁶ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013): 242.

²⁷ Ibid: 245.

centered on the rights of sovereigns, but on their responsibilities. This reconceptualization resulted in a focus on the responsibility of governments to protect people and property and reoriented sovereignty to protect people as well as states, meaning non-intervention was no longer regarded as a sacrosanct principle.²⁸

Despite this reconceptualization of sovereignty by Western countries, China has sought to maintain its concept of sovereignty. As globalization has increased, Chinese leaders have embraced it, but sought to control the socioeconomic effects domestically by using nationalism and sovereignty.²⁹ Their views on sovereignty are contained in their Five Principles of Peaceful Coexistence.³⁰ These principle share many commonalities with those of Westphalian sovereignty. The principle require mutual respect for territorial integrity and sovereignty, mutual non-aggression, mutual non-interference in internal affairs, equality of benefit and peaceful coexistence.³¹ Unlike the Westphalian conception, though China's concept of sovereignty is not subject to higher power. China never developed the concept of state-centric community because the centralized authority was never challenged, so there was no need to share power.³² The combination of the moral spiritual system present and a lack of countries who could be considered an equal led to an absolute view of sovereignty.³³ The modern conception of this can be seen in China's presentation of the "New Security Concept" which calls for cooperative means to

²⁸ Chan, Lai-Ha, Pak K. Lee, and Gerald Chan. "Rethinking Global Governance: A China Model in the Making?" *Contemporary Politics* 14, no. 1 (2008): 4.

²⁹ Coleman, Andrew, and Jackson Nyamuya Maogoto. "'Westphalian' Meets 'Eastphalian' Sovereignty: China in a Globalized World." *Asian Journal of International Law* 3, no. 02 (2013): 240.

³⁰ Ibid: 240.

³¹ Ibid: 240.

³² Ibid: 251.

³³ Ibid: 254.

deal with security issues without diluting the state-centric version of international relations.³⁴ As an example of this, we can look at China's requirements for humanitarian interventions which state the intervention requires UN authorization, the invitation of the target state, and that it can only be pursued when all other means have failed.³⁵

The literature on Humanitarian Interventions would suggest that these actions, when non-consensual, violate the principle of non-interference in the domestic and internal affairs of a nation that is inherent in Westphalian sovereignty. In looking at the UN charter, we see that it prohibits "Threat of force against the territorial integrity or political independence of any state" and prevents the UN from intervening in matters within the domestic jurisdiction of any state.³⁶ Based on this, it would seem that any intervention would qualify as a violation of sovereignty. However, Stefano points out that Humanitarian Interventions are based off of Article 28 of the Universal Declaration of Human Rights.³⁷ He goes on to point out that there is now the view that violations of any of the rights and freedoms listed in Article 28 gives a moral authorization to a military intervention that is beyond the obligation not to interfere in the domestic affairs of states.³⁸ This has led to a codification of instances when humanitarian intervention is permitted through the creation of the doctrine of Responsibility to Protect (RtoP). RtoP

³⁴ Yahuda, M. "The Evolving Asian Order: The Accommodation of Rising Chinese Power." In *Power Shift: China and Asia's New Dynamics*, edited by David L. Shambaugh. Berkeley: University of California Press, 2005.

³⁵ Carlson, Allen. "Helping to Keep the Peace (Albeit Reluctantly): China's Recent Stance on Sovereignty and Multilateral Intervention." *Pacific Affairs* 77, no. 1 (Spring 2004): 10.

³⁶ Stefano, Paul Di. "Human Rights Violations and the Moral Permissibility of Military Intervention." *Peace Review* 23, no. 4 (2011): 539.

³⁷ Ibid: 539.

³⁸ Ibid: 539.

was proposed by the Commission on Intervention and State Sovereignty and states that “Sovereign states have the responsibility to protect their own citizens from avoidable catastrophe- from mass murder and rape, from starvation- but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.”³⁹ Tiewa states that RtoP was designed as an attempt to create an obligation for countries to intervene to prevent massive human rights disasters even if they occur within a sovereign state.⁴⁰ The nature of these required interventions can range from sanctions and prosecution to military intervention, however the later requires the approval of the UN Security Council.⁴¹

Authors writing about the sovereignty implications of trade regulation focus mostly on the WTO and specifically on two aspects, Most Favored Nation Status and its court system. One of the primary goals of the WTO, and previously the General Agreement on Trade and Tariffs (GATT), is to counteract the tendency of larger countries to impose their view on weaker countries, this was done through the imposition of Most Favored Nation (MFN) status, which requires that all states be treated uniformly and removes the ability for countries to autonomously set their trade terms.⁴² Adoption of MFN signified a move away from conventional views on sovereignty because it removes the individual countries are no longer in full control of their trade policy.⁴³ Despite the

³⁹ Tiewa, Liu. "China and Responsibility to Protect: Maintenance and Change of Its Policy for Intervention." *The Pacific Review* 25, no. 1 (2012): 154.

⁴⁰ Ibid: 155.

⁴¹ Ibid: 155.

⁴² Mahncke, Hans. "Sovereignty and Developing Countries: Current Status and Future Prospects at the WTO." *Leiden Journal of International Law* 22, no. 2 (2009): 399-400.

⁴³ Ibid: 400.

effects on sovereignty, there are two major benefits that authors such as Coglianesi and Jackson point out. International organizations provide 'co-ordination benefits' which ensure that actions by each nation do not cause harm to other nations, or the system, by acting out of self-interest.⁴⁴ They also prevent a 'race to the bottom' in which regulatory competition leads to a degradation of social and environmental standards.⁴⁵

In addition to MFN status, the WTO courts, designed to arbitrate disputes, have the potential to pose a threat to sovereignty. The courts, which were only meant to serve as an arbitrator of what measures are lawful, have begun making judgments on the desirability of certain measures.⁴⁶ If this trend continues, Mahncke warns that the oversight of policy preferences by the court could lead to a loss of sovereignty by the nations in the WTO.⁴⁷ Despite these threats to sovereignty, there are many who believe that the WTO has actually strengthened the sovereignty of some countries and that its design prevents it from being a serious threat to sovereignty. Mahncke begins this argument by pointing out that members of the WTO are only bound by the rules to which they agree.⁴⁸ This conditional nature of the rules has led Marchetti to characterize the WTO as a 'debating club whose benefits should be seen as tangential to measures taken domestically.'⁴⁹ This

⁴⁴ Coglianesi, C. "Globalization and the Design of International Institutions." In *Governance in a Globalizing World*, by Joseph S. Nye and John D. Donahue. Cambridge, MA: Visions of Governance for the 21st Century, 2000.

⁴⁵ Jackson, J. "International Economic Law in times That Are Interesting." *Journal of International Economic Law* 3, no. 1 (2000): 3-14.

⁴⁶ Mahncke, Hans. "Sovereignty and Developing Countries: Current Status and Future Prospects at the WTO." *Leiden Journal of International Law* 22, no. 2 (2009): 406.

⁴⁷ Ibid: 407.

⁴⁸ Mahncke, Hans. "Sovereignty and Developing Countries: Current Status and Future Prospects at the WTO." *Leiden Journal of International Law* 22, no. 2 (2009): 404.

⁴⁹ Ibid: 402.

lack of strength has led some to Howse to claim that the WTO has actually allowed countries to expand and project their sovereignty.⁵⁰ An example put forward to support this is Panama, who used its accession to the WTO to combat vested interests and corruption.⁵¹ The court system, as with the WTO's policies, also suffers from a degree of weakness that curbs its threat to sovereignty. Despite the fact that its rulings are meant to be binding to the parties involved, the courts do not possess the ability to enforce their rulings which has led some countries who disagree with the results to simply accept any sanctions that are placed on them for not abiding by the ruling.⁵² So, despite the threats that the WTO may pose to sovereignty, there seems to be a consensus that there are sufficient means to subvert these threats.

Literature concerning the creation of international courts also suggests that they are perceived by many countries as an infringement on sovereignty. The primary event that led to creation of the international courts was the Nuremberg Trials. The effect that had on sovereignty can be seen in a quote by Melandri stating, "Absolute sovereignty was redimensioned in the aftermath of World War II with the development of the Nuremberg Charter."⁵³ This impact can be further seen when Broomhall discusses how Nuremberg created a duty to prosecute crimes against humanity and genocide on behalf of the

⁵⁰ Mahncke, Hans. "Sovereignty and Developing Countries: Current Status and Future Prospects at the WTO." *Leiden Journal of International Law* 22, no. 2 (2009): 401-402.

⁵¹ Ibid: 402.

⁵² Ibid: 407.

⁵³ Melandri, Manuela. "The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay." *International Criminal Law Review* 9, no. 3 (July 2009): 534.

international community on the grounds of universal jurisdiction.⁵⁴ The effect this has on the Westphalian notion of sovereignty can be seen in another quote by Broomhall, “The imposition of international criminal responsibility for core crimes committed by individuals in the name of the state gave rise to the principle that individuals have rights directly under international law and established the subordination of state sovereignty to the core values of the international community.”⁵⁵ We see support for this statement from Cryer and Soares. The former discusses how international criminal lawyers generally see state sovereignty as the enemy of international accountability and that it is a potential obstacle to achieving criminal justice.⁵⁶ The latter puts forward the argument that, “All international bodies are restraints to the legal and even constitutional sovereignty of states.”⁵⁷ Discussion of the Rome Statute offers a further look into the effect the courts could have on sovereignty. The debate about the statute centered mainly on the constitutionalization of the transference of sovereignty.⁵⁸ As a result, many viewed accession to the Rome Statute as a surrender of sovereignty.⁵⁹ This has led to malaise and even hostility shown by the five permanent members of the Security Council which could serve as evidence that international criminal justice is a possible judicial counter-power and is viewed as an undesired conditioning on sovereignty.⁶⁰ Despite this, there is

⁵⁴ Broomhall, Bruce. *International Criminal Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*. Oxford: Oxford University Press, 2003, 56.

⁵⁵ Ibid, 56.

⁵⁶ Cryer, R. "International Criminal Law vs State Sovereignty: Another Round?" *European Journal of International Law* 16, no. 5 (2005): 980.

⁵⁷ Soares, Miguella De Serpa. "International Criminal Justice and the Erosion of Sovereignty." *Janus.Net: E-Journal of International Relations* 4, no. 2 (November 2013): 9.

⁵⁸ Ibid: 24.

⁵⁹ Ibid: 24.

⁶⁰ Ibid: 32.

discussion that the international courts are not threats to sovereignty. Melandri points out that the courts would only have jurisdiction in cases where a country failed to prosecute a case.⁶¹ Despite these views, Soares, himself, believes that it is not accurate to state that relations between sovereignty and international criminal justice are simply opposed and that there is no need to choose between sovereignty and international criminal justice.⁶²

Hypothesis

Since the end of World War II and at an accelerating rate since the end of the Cold War, international governance has been expanding. As this has occurred, many countries, including China, have viewed these new trends in international governance, most notably humanitarian intervention, trade regulation and the creation of international courts, with suspicion due to the impacts they can have on their sovereignty. Despite this, China has increased its participation in international organizations including the United Nations and World Trade Organization (WTO), who are the creators and enforcers of these trends. This has led to the questioning of whether China's views on sovereignty have softened despite the limits they seek to place limits on countries' sovereignty. In spite of this, China continues to hold an absolute view on sovereignty, which has become known as the Eastphalian view, and has been working to assert its own views on sovereignty from within these organizations and counter the trends of international governance it believes infringe on sovereignty.

⁶¹ Melandri, Manuela. "The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay." *International Criminal Law Review* 9, no. 3 (July 2009): 536.

⁶² Soares, Miguela De Serpa. "International Criminal Justice and the Erosion of Sovereignty." *Janus.Net: E-Journal of International Relations* 4, no. 2 (November 2013): 31.

Methodology

In order to determine if China is attempting to assert its own views on sovereignty on the rest of the World, I will examine China's how has interacted with the UN and the WTO by how they have responded to three major trends in global governance brought about by these organizations: military interventions, trade regulation and the creation of international courts. Each of these trends has implications for sovereignty and could result in a loss sovereignty by countries over certain domestic issues as they are replaced by the rules of the international organizations created to oversee them. Given China's economic power and its position on the UNSC, there are several option for China to resist infringements on sovereignty. The first would be for China to use its position as a major economic power to push back against these policies or to use its veto power to block these actions all together. The second reaction, in situations where China was not able to block the action, would be for them to refuse to accept the policy or judgment. After I have made the determinations on how China has responded to these trends and the effects they have had on sovereignty on sovereignty, I will look at all three trends together. If China has worked against two or all three of the organizations, I will accept my hypothesis that they are attempting to assert their own views on sovereignty.

The first trend I will analyze is the increase in militarized humanitarian interventions. In order to test whether China is attempting to use its position on the Security Council to assert its views on sovereignty, I will look specifically at interventions directed by the Security Council where the country did not request the intervention or the intervention went beyond the initial request. To test this I chose the interventions in Rwanda, Kosovo,

Libya and Syria because they all major post-Cold War interventions in which outside help was not requested or the UN exceeded the requested intervention by the parties involved. If China holds to its sovereignty policy in each case, I would expect to them to vote against these interventions. For each of the chosen interventions, I will examine China's behaviors, both the way they voted (for or against the resolution or whether they abstained) and their rhetoric. Cases in which China voted against resolutions where the subject country did not request the intervention will be regarded as evidence China is attempting to assert its views. For cases in which China abstained, I will subject the intervention to a further test in which I examine statements made by China regarding the intervention. Statements that argue against the intervention or that raise questions about sovereignty will be considered partial evidence for my claim and will be regarded as half of a vote against the resolution. I will then consider all of the interventions together and if the combined score is greater than 50% of what they would receive for always voting against the resolution, I will consider it evidence China is asserting its own views. To analyze China's views on trade regulation, I will look at two factors of China's interaction with the WTO. The part of my investigation will be to look into how China responds to WTO policies that violate sovereignty. To do this, I will use the MFN policy and whether China has acquiesced to this policy or if they have attempted to subvert it. Any instance of China pursuing trade policies that run counter to MFN status will be considered evidence that they are attempting to assert their view. The second part of the assessment will look into the dispute resolution mechanisms within the WTO. China views outside arbitration as a violation of sovereignty, which is seen in its territorial

negotiations with other countries. If China were attempting to assert its view, you would expect them to refuse to bring cases to arbitration and that they would disregard judgments levied against them by the arbitrators.

Lastly, I will examine how China has responded to the creation of international courts, specifically the ICC and ICJ. Similar to the arbitration mechanisms present in the WTO, if China viewed the ICC and ICJ as a violation of sovereignty, they would not bring cases before the court nor would they recognize the judgments of the court as valid.

Furthermore, they would not send judges to sit on the court. To determine if China is attempting to assert its views on sovereignty, I will examine if China submits cases, whether or not they abide by rulings made and whether or not they have judges that sit on the court. These will be considered accepted if China refuses to submit cases, does not abide by the rulings of the court and refuses to send Chinese judges to sit on the court. For the overall judgment of the relationship, if two of three conditions are met, I will accept that hypothesis that China is attempting to assert its own views as proven.

Data

Humanitarian Interventions

Possibly the most visible way in which international governance has increasing prevalence of military interventions into countries throughout the world since the end of the Cold War. Some of these instances are unilateral actions taken by a single country or organization, but most have occurred under the direction of the United Nations Security Council (UNSC). The reasons for these interventions have varied, but the majority of the interventions been for humanitarian reasons and in recent years have involved the use of

the concept of Right to Protect (R2P) as justification. Though there have been instances where the parties involved have requested the outside assistance, many of the interventions have been conducted without seeking prior consent for either the intervention or the expansion of the external role. As such, China has viewed many of these interventions as threats to sovereignty. If they were in fact working to actively impose their own views on sovereignty, we should expect to see them using their veto power as a member of the UNSC to achieve this goal.

The 1993 Civil War in Rwanda, between the Tutsis and the Hutus, offers the first opportunity to test for China's views on sovereignty despite the general view that Rwanda was a failure to properly intervene in a humanitarian crisis. Due to consent given by both the Tutsis and the Hutus, China voted with the UNSC to create the UN Assistance Mission in Rwanda (UNAMIR) which was charged with monitoring the ceasefire agreement between the two sides.⁶³ China eventually withdrew its initial support. As the situation continued to deteriorate, the Security Council voted on a new resolution, UNSC Resolution 929. This new resolution authorized a "temporary operation under national command and authority aimed at contributing to peace and security... using all necessary means to achieve this humanitarian mandate."⁶⁴ China lodged to major objections to this new resolution. First, in abstaining from voting on the resolution, they stated that the UN had not garnered cooperation or consent from the two parties

⁶³ Davis, Jonathan E. "From Ideology to Pragmatism: China's Position on Humanitarian Intervention in the Post-Cold War Era." *Journal of Transnational Law* 44, no. 2 (March 2011): 236.

⁶⁴ Fravel, M. Taylor. "China's Attitude toward U.N. Peacekeeping Operations since 1989." *Asian Survey* 36, no. 11 (1996): 1114.

involved.⁶⁵ Their second complaint was that the UNAMIR's mandate should remain limited to the monitoring of the peace treaty.⁶⁶ This incident again showed that China sticks to its policies, at least in its rhetoric. While consent was present, they voted to conduct the intervention, but as the mission changed and consent was withdrawn China was willing to voice its differences with the other members of the UN over what it perceived as a violation of sovereignty, but was not willing to exercise its veto power. The 1999 intervention in Kosovo offers another opportunity to test whether China attempts to assert its own version of sovereignty. China opposed the US-led air campaign in Kosovo.⁶⁷ IN this instance, they had only one major complaint, that the Kosovo issue was an internal affair and that there was no request by Yugoslavia for outside assistance. As a result the Chinese not only abstained from voting for UNSC Resolution 1160, but also criticized the six-power Contact Group (US, Britain, France, Italy, Germany and Russia) and the Organization for Security Cooperation in Europe (OSCE) for their handling of the situation.⁶⁸ Their position that this was an internal affair was summed up by statements made by Shen Guofang, Deputy Permanent Representative of China to the UN, saying "If the Council is to get involved in a dispute without the request of the country concerned, it may create a bad precedent and have wider implications," and "We do not believe that the situation in Kosovo posed a threat to international peace and

⁶⁵ Carlson, Allen. "Helping to Keep the Peace (Albeit Reluctantly): China's Recent Stance on Sovereignty and Multilateral Intervention." *Pacific Affairs* 77, no. 1 (Spring 2004): 17.

⁶⁶ Fravel, M. Taylor. "China's Attitude toward U.N. Peacekeeping Operations since 1989." *Asian Survey* 36, no. 11 (1996): 1114.

⁶⁷ Carlson, Allen. "Helping to Keep the Peace (Albeit Reluctantly): China's Recent Stance on Sovereignty and Multilateral Intervention." *Pacific Affairs* 77, no. 1 (Spring 2004): 19.

⁶⁸ Ibid: 20.

security.”⁶⁹ As with previous instances though, China did not exercise its veto ability and opted to simply take a rhetorical stand against the actions taken as a result of the resolution.

The NATO-led intervention into Libya offers another test for China’s views of sovereignty. This intervention was the first instance of R2P being used as a justification for a humanitarian intervention and was expected to draw a veto from China.⁷⁰ In the events leading up to the passage of UNSC Resolution 1973, China joined the rest of the Security Council in condemning the Gadhafi government’s actions and voted for Resolution 1970 which recalled the government’s responsibility to protect its people.⁷¹ Despite this criticism of the government’s actions China had no desire to see a military intervention take place. In statements, China stressed that Libya’s sovereignty, independence and territorial integrity should be respected and that the issue should be resolved by peaceful means.⁷² As a result, China joined several other nations in abstaining from voting on UNSC Resolution 1973.⁷³ China’s choice not to exercise its veto power stemmed mainly from the requests made by the African Union and League of Arab Nations for UN involvement in Libya.⁷⁴ However, as the role of the UN forces increased, China moved to openly criticizing NATO. They called for strict adherence to

⁶⁹ Wu, Chengqiu. "Sovereignty, Human Rights, and Responsibility: Changes in China’s Response to International Humanitarian Crises." *Journal of Chinese Political Science* 15, no. 1 (2010): 76.

⁷⁰ Garwood-Gowers, Andrew. "China and the “Responsibility to Protect”: The Implications of the Libyan Intervention." *Asian Journal of International Law* 2, no. 02 (2012): 376.

⁷¹ Ibid: 383.

⁷² Tiewa, Liu. "China and Responsibility to Protect: Maintenance and Change of Its Policy for Intervention." *The Pacific Review* 25, no. 1 (2012): 167.

⁷³ Garwood-Gowers, Andrew. "China and the “Responsibility to Protect”: The Implications of the Libyan Intervention." *Asian Journal of International Law* 2, no. 02 (2012): 384.

⁷⁴ Ibid: 386.

the resolution, warning that this should not be used for an attempt at regime change, and criticized involvement in what they considered the internal affairs of a country.⁷⁵ In this instance, China yet again refrained from using its veto power, however this was mostly due to the requests made by regional organizations. Once the nature of NATO's intentions became clear, China quickly moved to condemn the actions taken and requested that the resolution be followed.

In the wake of the Libya intervention, many countries wanted to take actions to intervene in Syria to deal with the humanitarian issues taking place. The Chinese joined the rest of the UNSC in condemning the humanitarian situation that was created by the Civil War, agreeing to a Presidential Statement, however were unwilling to approve any resolutions against Syria.⁷⁶ Despite their unwillingness to approve a resolution, China did not block efforts to peacefully resolve the conflict. They agreed to both the creation of a Special Envoy to aid in mediating the conflict and approved of the Six-Point Plan that was devised and had been submitted to the Syrian government.⁷⁷ As efforts continued, China agreed to UNSC Resolutions 2042 and 2043, which created an advance team and a full UN Mission respectively.⁷⁸ However, as the situation continued to deteriorate, Chinese resistance, with the support of Russia, stiffened. China and Russia blocked two resolutions because they perceived them as attempts to institute a regime change, which

⁷⁵ Garwood-Gowers, Andrew. "China and the "Responsibility to Protect": The Implications of the Libyan Intervention." *Asian Journal of International Law* 2, no. 02 (2012): 387.

⁷⁶ Jafarova, Esmira. "Solving the Syrian Knot: Dynamics within the UN Security Council and Challenges to Its Effectiveness." *Connections* 13, no. 2 (Spring 2014): 29.

⁷⁷ Ibid: 29.

⁷⁸ Ibid: 31.

they felt could set a precedent.⁷⁹ China's opposition was summed up by Wang Yi, China's Foreign Minister, when he stated, "External military intervention violates the purposes of the UN Charter and the basic norms of international relations and will add to the turmoil in the Middle East."⁸⁰ China's actions in this instance lead many to believe their strict adherence to their principle of non-interference were prompted by the results of the intervention in Libya. As such, China stood firm to its views of sovereignty and exercised its veto power on multiple resolutions concerning Syria.

In all the instances of humanitarian intervention examined, China refused to support the Security Council in passing the resolution. However, despite their disapproval, in all instances aside from Syria, they simply chose to abstain from voting instead of using their veto power. Despite this voting record, China registered vocal opposition to all of these interventions, leading me to accept my hypothesis that they are trying to assert their own view on sovereignty and not simply conforming to the current norms.

Trade Regulation

Global governance, in this case overseen by the WTO, has also been increasing in the domain of economics. The WTO, and its predecessor the GATT, was created to promote trade liberalization by setting rules for its members to follow, most notably the MFN clause, and by acting as an arbitrator in trade disputes amongst its members through the Dispute Settlement Body (DSB). Despite the voluntary nature of the rules of the WTO,

⁷⁹ Jafarova, Esmira. "Solving the Syrian Knot: Dynamics within the UN Security Council and Challenges to Its Effectiveness." *Connections* 13, no. 2 (Spring 2014): 44.

⁸⁰ Sharp, Jeremy M., and Christopher M. Blanchard. 2013. "Possible U.S. Intervention in Syria: Issues for Congress." Congressional Research Service: Issue Brief: 26.

these two functions do have the potential to infringe on a nation's sovereignty by removing their ability to fully control their trade policy, removing their ability to negotiate differences and by imposing penalties on a country for its trade policies. Though subverting these rules has become commonplace among many of the members, you would expect to see China joining this trend to challenge anything that it saw as a threat to its sovereignty.

China, like many other nations, has sought to undermine the MFN clause of the WTO. The primary means they have chosen to accomplish this is by creating bilateral and multilateral Free Trade Agreements (FTA). These agreements, which are allowed under the WTO, violate the principle of MFN because the participant countries are not required to extend the same benefits given to the members of the FTA to other nations.⁸¹ As of Early 2012, China had already signed 10 bilateral and multilateral FTAs with multiple countries and organizations (Hong Kong, Macau, Taiwan, ASEAN10, Pakistan, Singapore, Peru, and Colombia).⁸² In addition to these, they were also working on agreements with Australia, Iceland, South Korea, Norway, Switzerland, the Gulf Cooperation Council and Southern African Customs Union.⁸³

The DSB was designed to make rulings on disputes between WTO members when bilateral negotiations had failed⁸⁴. Despite the threats that the DSB poses to sovereignty,

⁸¹ Mahncke, Hans. "Sovereignty and Developing Countries: Current Status and Future Prospects at The WTO." *Leiden Journal of International Law* 22, no. 2 (2009): 405.

⁸² Song, Guoyou, and Wen Jin Yuan. "China's Free Trade Agreement Strategies." *Washington Quarterly* 35, no. 4 (Autumn 2012): 112.

⁸³ Ibid: 112.

⁸⁴ Zhang, Xiaowen, and Xiaoling Li. "The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China." *Journal of Contemporary China* 23, no. 85 (2014): 160.

China's track record has shown compliance with rulings against it and a willingness to bring disputes against other nations. Initial fears were that China would act as a disruptive force within the DSB and would use it to pursue their own interests, similar to how they have upon joining other international organizations.⁸⁵ Instead, China has become active in the dispute resolution process. They rank among the Top 3 parties involved in the dispute settlement process, acting as a complainant in addition to a respondent.⁸⁶ The fact that China has taken the role of a complainant is telling in that it shows China is not passively using the system but seeks to be an active member of the process, despite the fact that it can call for outside impositions to be made on a country's laws. China has additionally showed great respect for the authority of the DSB, even in instances where it faced adverse rulings or in which the DSB did not stick to the text of the Dispute Settlement Understanding (DSU).⁸⁷⁸⁸ Even though China has shown a willingness to use the DSB and adhere to its rulings, there are instances where bilateral negotiations are a more effective means of seeking a resolution. In the case of China, this is the case when politically sensitive issues are involved.⁸⁹ An example of this is the case of China-Publications and Audiovisual Products where a Chinese State-Owned Enterprise (SOE) was involved selling cultural products and enjoyed privileges under China's

⁸⁵ Kennedy, Matthew. "China's Role in WTO Dispute Settlement." *World Trade Review* 11, no. 04 (2012): 572.

⁸⁶ Ibid: 557.

⁸⁷ Ibid: 588.

⁸⁸ Zhang, Xiaowen, and Xiaoling Li. "The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China." *Journal of Contemporary China* 23, no. 85 (2014): 160.

⁸⁹ Zhang, Xiaowen, and Xiaoling Li. "The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China." *Journal of Contemporary China* 23, no. 85 (2014): 160.

policies.⁹⁰ Because of the level of power these SOEs held, they were able to influence the government and have caused the implementation of the ruling by the DSB to be delayed.⁹¹ Overall China has shown a desire to comply with DSB rulings, which can be seen in Webster's study which found China to be compliant in both a timely manner and qualitative manner in 5 of 8 cases examined.⁹² The future of compliance, however is less certain particularly as China becomes more powerful. China has failed to fully comply with some of the recent rulings by annulling all regulations as pledged or implementing the ruling in a non-compliant manner.⁹³ The chief violations that China has committed in this realm are their continued implementation of policies that violate the prescription on low tariffs, fail to minimize export restrictions, fail to give equal treatment to foreign investment and fail to offer strong intellectual property rights.⁹⁴ However, China's violation of these rulings may simply show that they have learned that complete compliance is not something that is always observed by the great trading powers.⁹⁵

China's interactions with the WTO seem to generally fall in line with the actions of the rest of the member nations, particularly those of the greater powers. China has shown a general willingness to accept both the policies put forward the any rulings made regarding them. There are certain caveats to this which mostly involve SOEs. Overall,

⁹⁰ Zhang, Xiaowen, and Xiaoling Li. "The Politics of Compliance with Adverse WTO Dispute Settlement Rulings in China." *Journal of Contemporary China* 23, no. 85 (2014): 154.

⁹¹ Ibid: 154.

⁹² Webster, Timothy. "PAPER COMPLIANCE: HOW CHINA IMPLEMENTS WTO DECISIONS." *Michigan Journal of International Law* 35, no. 3 (Spring 2014): 574.

⁹³ Ibid: 574.

⁹⁴ Ibid: 574.

⁹⁵ Ibid: 574.

however, China has not shown tendencies to fight any of these breaches or potential breaches of sovereignty.

International Courts

There are two major international courts have been set up, the first was the International Court of Justice, which was established through the United Nations, and the second was the International Criminal Court, which was established after the signing of the Rome Statute.⁹⁶⁹⁷ Though each court has its own jurisdiction, they share a common trait in that they both require a country to grant its consent in order for the court to have jurisdiction over them, in the case of the ICJ, or their citizens, in the case of the ICC.⁹⁸⁹⁹ The creation of these courts have caused a large amount of debate over what effect they will have on sovereignty.

The ICJ was created to serve as the chief legal body of the UN with the power to deal with legal issues referred to it by the states and to provide the General Assembly with guidance on legal issues.¹⁰⁰ As previously mentioned, though, the court's jurisdiction only extends to those countries who accept it. Though is not the only nation that refuses to recognize this jurisdiction, China has chosen not joined many other Asian nations in its

⁹⁶ Melandri, Manuela. "The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay." *International Criminal Law Review* 9, no. 3 (July 2009): 531.

⁹⁷ Ušiak, Jaroslav, and L'ubica Saktorová. "THE INTERNATIONAL COURT OF JUSTICE AND THE LEGALITY OF UN SECURITY COUNCIL RESOLUTIONS." *Danube: Law & Economics Review* 5, no. 3 (2014): 201.

⁹⁸ Chersterman, Simon. "The International Court of Justice in Asia: Interpreting the Temple of Preah Vihear Case." *Asian Journal of International Law* 5, no. 1 (January 2015): 1.

⁹⁹ "Frequently Asked Questions." Frequently Asked Questions. Accessed April 02, 2015. http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx.

¹⁰⁰ Ušiak, Jaroslav, and L'ubica Saktorová. "THE INTERNATIONAL COURT OF JUSTICE AND THE LEGALITY OF UN SECURITY COUNCIL RESOLUTIONS." *Danube: Law & Economics Review* 5, no. 3 (2014): 201.

refusal to recognize this jurisdiction.¹⁰¹ The political nature of these cases makes it unlikely that China will move to recognize the ICJ's jurisdiction, particularly in regards to the South China Sea, and that they, like other Asian nations will pursue bilateral negotiations as a means to solving disputes.¹⁰²

China's relationship with the ICC is more complex. The ICC was created as an independent international organization¹⁰³ with the signing and ratification of the Rome Statute by 60 nations.¹⁰⁴ Its purpose is to prosecute crimes of importance to the international community as a whole, namely war crimes, genocide, crimes against humanity and crimes of aggression.¹⁰⁵ As with the ICJ, China does not recognize the jurisdiction of the ICC, and is currently a non-State Party.¹⁰⁶ However, China has both voiced its support for the creation of the court and was an active participant in the negotiations that produced the Rome Statute, despite its casting of a negative vote in the end.¹⁰⁷ There are a few issues that China has with the ICC that caused its negative vote. The first major issue was the issue of jurisdiction, which China believed should be on an

¹⁰¹ Chersterman, Simon. "The International Court of Justice in Asia: Interpreting the Temple of Preah Vihear Case." *Asian Journal of International Law* 5, no. 1 (January 2015): 1.

¹⁰² Chersterman, Simon. "The International Court of Justice in Asia: Interpreting the Temple of Preah Vihear Case." *Asian Journal of International Law* 5, no. 1 (January 2015): 1-6.

¹⁰³ "Frequently Asked Questions." Frequently Asked Questions. Accessed April 02, 2015. http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx.

¹⁰⁴ Melandri, Manuela. "The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay." *International Criminal Law Review* 9, no. 3 (July 2009): 531.

¹⁰⁵ "Frequently Asked Questions." Frequently Asked Questions. Accessed April 02, 2015. http://www.icc-cpi.int/en_menus/icc/about%20the%20court/frequently%20asked%20questions/pages/faq.aspx.

¹⁰⁶ Zhu, Dan. "China, the Crime of Aggression, and the International Criminal Court." *Asian Journal of International Law* 5, no. 1 (January 2015): 94.

¹⁰⁷ Jia, Bing Bing. "CHINA AND THE INTERNATIONAL CRIMINAL COURT: THE CURRENT SITUATION." *Singapore Year Book of International Law* 10 (2006): 87.

opt-in basis for the crimes that could fall under the ICC's purview.¹⁰⁸ Their desire for an opt in nature of the court displays similar tendencies to their policy on humanitarian intervention, showing a consistency that external organizations should only intervene in a country's affairs if they are invited. They also held reservations over the definitions put forward for war crimes and crimes against humanity, which they cited had no current international convention.¹⁰⁹ China's final objection came with the failure of the negotiators to come to an agreement on a definition of the crime of aggression, its inclusion left too much uncertainty for China to be able to accept the Rome Statute.¹¹⁰ Despite this, China has maintained contact with the court, closely following its negotiations over the definition of the crimes of aggression, and has participated in several working groups.¹¹¹ China's dealings with the court have upheld their commitment to maintaining their own views on sovereignty, but have also demonstrated a desire to work constructively with the ICC to ensure they protect the sovereign rights of nations. China's behavior toward the international courts displays their desire to defend their own sovereignty. Overall, they are not attempting to disrupt the formation of the courts, China has simply worked to remove itself from their jurisdiction when possible. In the case of the ICC, they have been working to influence the court and assert their view of optional

¹⁰⁸ Jia, Bing Bing. "CHINA AND THE INTERNATIONAL CRIMINAL COURT: THE CURRENT SITUATION." *Singapore Year Book of International Law* 10 (2006): 88.

¹⁰⁹ Ibid: 88.

¹¹⁰ Zhu, Dan. "China, the Crime of Aggression, and the International Criminal Court." *Asian Journal of International Law* 5, no. 1 (January 2015): 95.

¹¹¹ Zhu, Dan. "China, the Crime of Aggression, and the International Criminal Court." *Asian Journal of International Law* 5, no. 1 (January 2015): 95.

jurisdiction, thus allowing them to defend their sovereignty, though not in a destructive manner.

Conclusion

Overall, China's actions toward international organizations offers weak support a claim that they are actively trying to assert their views on sovereignty on these organizations. Across all three international norms that were examined in this paper China displayed a definite desire to protect their view on sovereignty, but did not display a consistent tendency to actively assert their view or to thwart these trends. For the purpose of the test, they scored just over half the points available for humanitarian interventions and half for both trade regulation and establishment of international courts. This leaves two possible explanations, which further study could seek to better elucidate. The first is that China is approaching these organizations, and the trends they create, from a realist perspective and that they see more benefit to themselves in conforming to these trends than they do to seeking to thwart them. The second possible explanation is that China, which is still a developing nation, has not accrued what they consider to be enough power, relative to the West, to be able to successfully challenge these norms. As such, conducting these tests again, at a later date, would allow for a determination of which of these hypotheses is true. So long as China maintains their views on sovereignty, similar results to these tests would suggest that China is employing a realist perspective while active attempts by China to assert their views would support the hypothesis that China was simply waiting for the relative difference in power between themselves and the West to narrow before they could begin attempting to assert their own views.

Chapter 2: The Effect of Chinese Views on Sovereignty on Resource Disputes

Introduction

Despite the initial predictions that limited, shared resources would become a source of conflict, we have seen the opposite. Nations across the world are working together and putting aside their differences in order to engage in joint exploitation of resources ranging from water to oil. This even the case when there is a large disparity in power between the two nations that would be competing for the resources.

There is, however, one exception to this this trend of cooperation in the exploitation of resources where both countries have a valid claim, China. Despite China's claims of being neighborly and their entry into several treaties and organizations regarding resources, China has adopted a policy of pursuing their own resource goals with little to no regard for the rights of other countries and with policies that fly in the face of the requirements of equitable and reasonable use that we see present in modern day international law and often violates the treaties they've signed or the regulations placed on them by entry into different organizations. These policies are not relegated to a single resource, such as oil which is considered to be of great strategic value, but spans nearly any potential transboundary resource. This is seen in such examples are their creation of massive dams on rivers originating in Tibet, their attempts to exclude other South East Asian nations from fishing in the South China Sea, and the recent clash between China and Vietnam over the deployment of the oil rig Shiyu 981.¹¹² This unilateral move,

¹¹² Stout, David. "China Removes Contentious Oil Rig from Waters Claimed by Vietnam." Time. July 16, 2014. Accessed August 17, 2014. <http://time.com/2990590/oil-rig-leaves-contested-waters-vietnam-china/>.

which ran contrary to their previous agreement to jointly develop the oil believed to be in the area, lead to Chinese and Vietnamese ships ramming each other and greatly increased tensions in the region.¹¹³ These policies have already destabilized the region and have the potential to be an increasing source of tension between China and its neighbors in the future.

Because of the increasing role that China is playing both in the region and on the world stage, it is necessary to understand the views that are driving their foreign policy, particularly when they are a source of tension. Chief among these, in regards to conflicts caused by resources, is their strict, and outdated view on sovereignty and what rights that gives them in regards to resources. In order to accomplish this, I will be looking at how China's view on sovereignty differs from the current interpretation of sovereignty seen in international law and how this brings them into conflict with other nations at a time when shared resources have generally brought nations closer together.

Literature Review

To determine whether China's views on territory are causing the disputes that are occurring between it and its neighbors, two factors must be examined. First it will be necessary to examine what role resources play in disputes between countries. The next step will be to establish whether China has a view on resource and territorial rights that differs from other countries.

¹¹³ Daiss, Tim. "Chinese-Vietnamese Oil & Gas Agreement Seen as Political Posturing - Energy Tribune." Energy Tribune RSS. July 15, 2013. Accessed August 17, 2014.
<http://www.energytribune.com/78167/chinese-vietnamese-oil-gas-agreement-seen-as-political-posturing#sthash.PJ7cI5Cs.dpbs>.

Many authors have sought to determine the role that resources play in interstate conflict. This has led to three different views on how resources can either lead to conflict, or conversely, to cooperation. The first view takes a realist approach to resources. They state that resources, in particular ones that are scarce or valuable, will act as a source of conflict. The second view is that, though resources may play into the reasons for a conflict, other forces, in particular political and economic forces must be present in order for resource disputes to cause a conflict. The final group, by contrast, believes that shared resources tend to lead to cooperation among the nations that share them.

The view that resources act as a source of conflict is often referred to as the neo-Malthusian point of view. Scholars who subscribe to this view posit that the increasing demand for resources will lead to increased instances of resource scarcity, which will in turn lead to conflict. Dinar outlines this thinking when he discusses how a number of factors including climate change and population growth will lead states to take Hobbesian actions in order to compete for the limited resources available to them.¹¹⁴ He goes on to discuss how this view is supported by Choucri and North's Lateral pressure theory, in which they state that, "Rivalry and Conflict in the international system is partly guided by domestic growth and expansion and subsequent competition for resources and markets."¹¹⁵ This is supported by Starr, who discusses how increases in population and industrialization can lead a country to outstrip its resources and will thus potentially lead to violent conflict in order to continue its growth. Sharp further supports this point of

¹¹⁴ Dinar, Shlomi. *Beyond Resource Wars: Scarcity, Environmental Degradation, and International Cooperation*. Cambridge, MA: MIT Press, 2011, 5

¹¹⁵ Ibid, 2011, 5

view by discussing the issues that are taking place in the Caspian Sea basin and how the struggle for these resources has resulted in increased military presence or involvement from China, Russia and the United States.¹¹⁶ Even though this may not lead to a conflict between the major powers, there is still a chance that the desire to exploit the oil in the area could lead to conflicts among the smaller regional states.

The neo-Malthusian theory incorporates both renewable and non-renewable resources as potential sources for conflict. Chief among the resources that are believed to be potential causes for conflict are fresh water and fisheries, in the renewable realm, and oil, in the non-renewable realm. There seems to be a consensus among practitioners of this theory that water is the most likely of these resources to act as a source of conflict. Homer-Dixon lays out how conflict could arise between and upstream and downstream state over water, citing that water is a resource that is essential to national survival. The other resource scholars believe has the potential to drive conflict is oil. Again, Homer-Dixon points to the fact that oil is a major driver of military power.¹¹⁷ Klare goes on to say that oil could act as a “casus belli” for countries in the Persian Gulf, Caspian Sea or South China Sea.¹¹⁸

¹¹⁶ Starr, S. Frederick. "Power Failure: American Policy in the Caspian." *National Interest* 47 (Spring 1997): 20-31

¹¹⁷ Homer-Dixon, Thomas F. *Environment, Scarcity, and Violence*. Princeton, NJ: Princeton University Press, 1999, 138-139.

¹¹⁸ Klare, Michael T. *Resource Wars: The New Landscape of Global Conflict*. New York: Metropolitan Books, 2001.

The remaining views, though somewhat different, belong to a group called the “Resource Optimists” or “Cornucopians.”¹¹⁹ These scholars take the view that resources will not be the single, driving factor in conflicts, if they lead to conflict at all. Lomborg posits that these scarcities will result in adaptations to the economy, via technology or of social institutions, or a combination of these methods, to compensate for the scarcity.¹²⁰

A somewhat less straight-forward view of the relationship between resources and conflict is that they are only a contributing factor to a conflict. This view, outlined by Koubi et al, states that resources are only a part of the cause for any war and the political and other factors need to be present in order for a conflict to result.¹²¹

The other view espoused by the Resource Optimists is that scarce resources are more likely to result in cooperation between the nations that share these resources. Rawls conjectures that this presence of a scarcity will cause the parties involved the impetus necessary to come to an agreement.¹²² This is supplemented by Dolšák and Ostrom, who add to this that the resource must not be degraded to the point where it is no longer usable and that there must be advantages that result from organizing to ensure its distribution.¹²³

¹¹⁹ Koubi, Vally, Gabriele Spilker, Tobias Böhmelt, and Thomas Bernauer. "Do Natural Resources Matter for Interstate and Intrastate Armed Conflict?" *Journal of Peace Research* 51, no. 227 (August 21, 2013): 228

¹²⁰ Lomborg, Bjørn. *The Skeptical Environmentalist: Measuring the Real State of the World*. Cambridge: Cambridge University Press, 2001.

¹²¹ Koubi, Vally, Gabriele Spilker, Tobias Böhmelt, and Thomas Bernauer. "Do Natural Resources Matter for Interstate and Intrastate Armed Conflict?" *Journal of Peace Research* 51, no. 227 (August 21, 2013): 228

¹²² Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap Press of Harvard University Press, 1971.

¹²³ Dolšák, Nives, and Elinor Ostrom. "The Challenges of the New Commons." In *The Commons in the New Millennium*, 3-34. Cambridge, MA: MIT Press, 2003

The initial view on this subject was that resources would become a major driver of interstate conflict. However, a growing body of research suggests that resource scarcity can act as a driver toward cooperation rather than conflict. At most, scholars view the role of resources in conflicts as a secondary issue that is part of number of grievances between the parties involved.

To examine the second part of my hypothesis, it is necessary to look at the current state of sovereignty and resource rights in international law. Literature on this subject, and across all resources it might touch, suggest that there is a balance that has been struck between the sovereign rights of states over the resources contained within their territory and the responsibility to any other states with whom they share these resources, to practice equitable and reasonable use.

According to Hochstetler et al and Keohane, original views on sovereignty conveyed on nation-states internal supremacy and the ability to act independently of external pressures, thus being free of external influences is viewed as the ideal situation.¹²⁴¹²⁵ This view is often characterized as absolutist.¹²⁶ However, Litfin shows that because of the complexity of environmental issues that states will often enter into a “sovereignty bargain” where they give up some autonomy in order to receive a benefit of some kind.¹²⁷

¹²⁴ Hochstetler, Kathryn, and Anne Marie Clark. "Sovereignty in the Balance: Claims and Bargains at the UN Conferences on the Environment, Human Rights, and Women." *International Studies Quarterly* 44, no. 4 (December 2000): 591-592

¹²⁵ Keohane, Robert O. "Ironies of Sovereignty: The European Union and the United States." *Journal of Common Market Studies* 40, no. 4 (November 2002): 744

¹²⁶ Saul, Ben. "China, Natural Resources, Sovereignty and International Law." *Asian Studies Review* 37, no. 2 (2013): 197-196

¹²⁷ Litfin, Karen T. "Constructing Environmental Security and Ecological Interdependence." *Constructing Environmental Security and Ecological Interdependence* 5, no. 3 (Summer 1999): 359

This absolutist view, however, has changed in light of the realization that environmental and resource issues do not fit neatly into territorial boundaries, and that the actions of one nation may have negative repercussions on other nations access to and ability to exploit their resources. The United Nations has worked to codify this new view that is centered on the principle of “equitable and reasonable use,” which is mentioned by Wouters and Berardo and Gerlack.¹²⁸¹²⁹ This new vision of sovereignty is designed to urge cooperation amongst states in extracting resources.¹³⁰

In the literature for both conflict and sovereignty is plainly clear that there has been a great shift. For resource conflict, the cornucopian view is generally poorly outlined and mostly just stated that they view human adaptability as the necessary solution to resource driven conflicts. Though they do believe that other factors tend to be the drivers, they do not mention how these factors, in combination with a resource issue could lead to conflict. In sovereignty literature, there has been a major shift from the absolutist view to one of cooperation, particularly when it comes to resources. It could be beneficial to do some sort of comparison between the two to fully delineate their differences and any similarities that they share.

¹²⁸ Ong, David M. "Joint Development of Common Offshore Oil and Gas Deposits: "Mere" State Practice or Customary International Law?" *American Journal of International Law* 93, no. 4 (October 1999):

¹²⁹ Wouters, Patricia. "The Yin and Yang of International Water Law: China's Transboundary Water Practice and the Changing Contours of State Sovereignty." *Review of European, Comparative & International Environmental Law* 23, no. 1 (April 2014): 69

¹³⁰ Ong, David M. "Joint Development of Common Offshore Oil and Gas Deposits: "Mere" State Practice or Customary International Law?" *American Journal of International Law* 93, no. 4 (October 1999): 781

Hypothesis

Despite a growing body of research that suggests that shared resources lead to cooperation among states, China has been engaged in an increasing number of disputes over shared resources, such as rivers, oil and fishing grounds. In many instances they refuse to negotiate with the other nations and in the instances where they have made agreements to conduct joint exploitation with other countries, they often violate these agreements. A key driver of these disputes is China's policy of irredentism and its strict views on territorial rights, which run in contrast to current customary international law, and serve as the cause for these disputes because it prevents other countries from being able to negotiate with China for their fair share of the shared resources.

Methodology

To examine this claim, that it is China's very strict view on sovereignty that is driving these resource disputes, I will examine other instances where countries have had competing claims over shared resources. I will be specifically focusing on river systems, oil and fishing grounds. These three groups of resources all have bodies of study that have been devoted to them, particularly looking at whether or not they contributed to conflict. As part of my selection of case studies, I have accounted for the fact that there is, in most cases, a very large disparity in power between China and the other countries involved in the resource disputes. As a result, I have sought to find case studies where one of the countries involved was considerably more powerful than the other country or countries. This lead me to include the disputes over oil in the Gulf of Mexico and North Sea, fishing disputes between the United States and Canada and river disputes between

Mexico and the United States in my case studies. The inclusion of these studies should help to control against the results being biased due to the disparity in power between China and its neighbors.

I will be conducting a direct comparison between each of the case studies, all of which involve a resource dispute and then examining their end or current state. Disputes will be considered successfully resolved if there is a treaty or organization that was put into place to govern access to the shared resource that is recognized by all parties as legitimate and in which none of the parties involved commits significant violations. The treaty or governing body does not have to ensure completely equitable access to the resource to be considered successful.

If my hypothesis is true, I would expect to see that the other case studies, in which the countries subscribe to the principle of equitable and reasonable usage, will result in a successful resolution to the resource dispute. However, the cases involving China should show that the Chinese, because of their strict view on sovereignty and use or irredentism, will either refuse to negotiate over the resources and claim them all for themselves or violate agreements that they have made.

Data

Oil in the North Sea

One example of a shared resources leading to cooperation is the 1979 treaty between Norway and the United Kingdom for the development of the Frigg Gas Field. This is despite the fact that the United Kingdom has had several years over the life of the treaty where it was a net importer of oil, such as 1980, where it was consuming over 50,000

barrels per day (bpd) more than it was producing.¹³¹ The field lies on both sides of the maritime territorial divide between the two countries. This reservoir was equally capable of being exploited from both sides of the boundary. As a result, the governments of the two countries came together and generated a plan to jointly exploit the gas field and to divide the proceeds. Their agreement allowed for the joint exploitation of the field via unitization, which is a system in which a transboundary gas field is exploited as a single unit and the two governments create a host facility based on their respective laws.¹³² Their development plan resulted in a system where both countries were able to safeguard sovereignty and that required both countries to approve the development plans.¹³³ The agreement between the United Kingdom and Norway, beyond showing that oil can be jointly exploited without drawing the nations into a conflict, has acted as a model to the rest of the world. Countries in the Middle East and the Western Hemisphere have taken lessons from this agreement and modeled their own joint exploitation efforts after it.

Oil in the Gulf of Mexico

As with the case of the North Sea, the United States and Mexico and Mexico share some significant oil and natural gas fields in the Gulf of Mexico that could serve as a major point of tension between the two nations. This could be exacerbated by the fact that the United States, who is clearly the more powerful nation has been seeking to become more

¹³¹ "Independent Statistics and Analysis." *United Kingdom*. U.S. Energy Information Administration - EIA, 30 May 2013. Web. 03 May 2015.

¹³² Estrada, Javier H. "Reservoirs That Cross Country Lines Need Special Agreements." *Offshore* 69, no. 7 (July 2009): 43-44

¹³³ Ibid: 44

energy independent by pursuing domestic oil and natural gas production. However, as with the case of the North Sea, the United States and Mexico have come to an agreement which allows both countries to exploit their fair share of the hydrocarbon resources contained in the Gulf.

The agreement between the United States and Mexico is based on two treaties. The first of these treaties was the Treaty on Maritime Boundaries, which though it was concluded in 1978, was not ratified by the United States until 1997, mostly due to the fact that the treaty did not include delimitation of transboundary reservoirs.¹³⁴ There was another major issue that was also left open by this treaty, a gap between the negotiated territorial claims that was termed the Western Gap.¹³⁵ This led to the negotiation of a second treaty between the United States and Mexico, called the Treaty Between the Government of the United States and the Government of the United Mexican States on Delimitation on the Continental Shelf in the Western Gulf of Mexico Beyond 200 Nautical Miles, this treaty set the boundaries of the Western Gap that included clauses to deal with the exploitation of transboundary reserves.¹³⁶ The framework created by the United States and Mexico, particularly the Treaty on Delimitation of the Continental Shelf in the Western Gulf of Mexico, has been viewed as mutually beneficial to both countries.¹³⁷ Despite the fact that some contend that the use of unitization would allow for more efficient and complete

¹³⁴ Urdaneta, Karla. "TRANSBOUNDARY PETROLEUM RESERVOIRS: A RECOMMENDED APPROACH FOR THE UNITED STATES AND MEXICO IN THE DEEPWATERS OF THE GULF OF MEXICO." *Houston Journal of International Law* 32, no. 2 (Spring 2010): 334-5

¹³⁵ Ibid: 335

¹³⁶ Ibid: 343

¹³⁷ Ibid: 391

exploitation of these resources,¹³⁸ the treaty allows for the both sides to exploit their portion of the resources and to act as starting point from which to negotiate further treaties between the two countries over transboundary reserves in the Gulf of Mexico and the Pacific Ocean.¹³⁹

United States and Canadian Fishing Agreement in the Gulf of Maine

In the 1970s, the United States and Canada extended their jurisdictions to include all waters within 200 nautical miles of their respective coasts, thus bringing the Gulf of Maine into their exclusive domain.¹⁴⁰ This proved to be an ineffective arrangement particularly because of the overlapping claims of the two countries in the Eastern George's Bank.¹⁴¹ This lead to the United States and Canada developing a number of cooperative initiatives seeking to address the transboundary issues the two countries were facing, resulting in the creation of Canada-US Steering Committee.¹⁴² Through its various committees, this the Canada-US Steering Committee assess fish stocks within the Gulf of Maine and supervises transboundary initiatives.¹⁴³

¹³⁸ Urdaneta, Karla. "TRANSBOUNDARY PETROLEUM RESERVOIRS: A RECOMMENDED APPROACH FOR THE UNITED STATES AND MEXICO IN THE DEEPWATERS OF THE GULF OF MEXICO." *Houston Journal of International Law* 32, no. 2 (Spring 2010): 391

¹³⁹ Vargas, Jorge A. "The 2012 U.S.-Mexico Agreement on Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico: A Blueprint for Progress or a Recipe for Conflict?" *San Diego International Law Journal* 14, no. 1 (Fall 2012): 68-9

¹⁴⁰ Pudden, Emily J., and David L. VanderZwaag. "Canada–USA Bilateral Fisheries Management in the Gulf of Maine: Under the Radar Screen." *Review of European Community & International Environmental Law* 16, no. 1 (2007): 36

¹⁴¹ Herbert, Glen J. "Fisheries Relations in the Gulf of Maine: Implications of an Arbitrated Maritime Boundary." *Marine Policy* 19, no. 4 (1995): 301

¹⁴² Pudden, Emily J., and David L. VanderZwaag. "Canada–USA Bilateral Fisheries Management in the Gulf of Maine: Under the Radar Screen." *Review of European Community & International Environmental Law* 16, no. 1 (2007): 36

¹⁴³ Ibid: 37

Despite the fact that the Canada-US Steering Committee was only an advisory committee and could provide non-binding advice, the committee was able to devise the formula that would be used to allocate the different fish stocks between the United States and Canada.¹⁴⁴¹⁴⁵ The United States and Canada also faced another major issue in their agreements over the Gulf of Maine was illegal fishing, mostly from American fishing vessels violating Canadian waters.¹⁴⁶ This prompted a further agreement between the United States and Canada to standardize their penalties for violating the fishing agreement.¹⁴⁷ In looking at these agreements, it is clear that the United States and Canada are working together to ensure that each country receives its fair share of the fish stocks in the Gulf of Maine.

United States and Mexican River Arrangements

The United States and Mexico share two major Rivers, the Colorado and the Rio Grande Rivers. Both of these rivers have their primary headwaters in the United States, however the Rio Grande has several major tributaries that feed it from the Mexican side of the border.¹⁴⁸ These rivers are administered by the International Boundary and Water Commission (IWBC), whose job is to ensure that obligations are being met by countries

¹⁴⁴ ¹⁴⁴ Pudden, Emily J., and David L. VanderZwaag. "Canada–USA Bilateral Fisheries Management in the Gulf of Maine: Under the Radar Screen." *Review of European Community & International Environmental Law* 16, no. 1 (2007): 37

¹⁴⁵ Ibid: 38

¹⁴⁶ Ibid: 40

¹⁴⁷ Ibid: 40

¹⁴⁸ Carter, Nicole T., Clare Ribando Seelke, and Daniel T. Shedd. "U.S.-Mexico Water Sharing: Background and Recent Developments." *Congressional Research Service: Issue Brief*, 2013, 1

in terms of the amount and quality of water they are supplying to the rivers and to arbitrate any disputes that may arise over the rivers.¹⁴⁹

The IWBC has managed these river systems effectively, ensuring both the quantity and quality requirements have been met. A primary example of the IWBC in action was their arbitration of a water quality complaint filed by Mexico in regards to the Colorado River in 1960s.¹⁵⁰ The water being delivered to Mexico by the United States was too salty and was thus disrupting Mexican agriculture and their ability to distribute freshwater to their citizens.¹⁵¹ The IWBC arbitrated the situation, and over the course of a number of years got the two countries to agree to a series of drainage ditches to lower the salinity and funding to repair the damage done by salty water.¹⁵² The IWBC has also been working to address the drought conditions that are being faced by the Rio Grande by using its technical and diplomatic expertise to act as an arbitrator between the U.S. Department of State and the Mexican Foreign Ministry. Its effectiveness can also be seen in the fact that they were able to conclude negotiations on Minute 319, which is many people view as setting a precedent for the allocation of resources for environmental concerns.¹⁵³ This ability successfully arbitrate disputes shows a strong structure and commitment by both sides to ensure peaceful and equitable use of their shared freshwater resources.

Chinese Views on Territory

¹⁴⁹ Carter, Nicole T., Clare Ribando Seelke, and Daniel T. Shedd. "U.S.-Mexico Water Sharing: Background and Recent Developments." *Congressional Research Service: Issue Brief*, 2013,1

¹⁵⁰ Ibid, 9

¹⁵¹ Ibid, 9

¹⁵² Ibid, 9

¹⁵³ Buono, Regina M., and Gabriel Eckstein. "Minute 319: A Cooperative Approach to Mexico–US Hydro-relations on the Colorado River." *Water International* 39, no. 3, 273

When looking at the literature in this area we find that there are two major views on how China's interactions with its neighbors. The first is that China has worked to become a more integral part of the international community and that they are working to conduct multilateral negotiations with its neighbors over conflicts and abides by these rulings based on their understanding of International Law. The other view is that China has an absolutist view of sovereignty, which results in their aggressive territorial claims and their refusal to recognize any claims to resources they believe to be their own, though even when it pursues this absolutist position we have seen instance in which China was willing to make concessions.

Since the 1970s, China has been working to integrate itself into the international system. At that time it assumed its seat on the United Nations Security Council and has since been integrating itself into the international system. Much of their initial hesitation, according to Saul, was based on the historical application of International Law that had been applied to them by the European colonial powers in which power was rewarded.¹⁵⁴ This application, he continues, has helped shape the Chinese view on International Law, particularly their views on sovereignty and historical claims. However, this view subscribes to the fact that the Chinese are pursuing this further integration and cites its membership in international organizations and the treaties and trade agreements to which it is a party as a sign that they are simply pursuing normal international norms.

¹⁵⁴ Saul, Ben. "China, Natural Resources, Sovereignty and International Law." *Asian Studies Review* 37, no. 2 (2013): 197-198

The second point of the view is that China is that they are pursuing a very strict interpretation of International Law and that they are standing on loose historical claims to back up their strict version of sovereignty. Buhi brings this out particularly by explaining China's use of irredentism in its Constitution. In doing this, they are bringing issues that should be foreign policy, such as the status of resources in the South China Sea, into the domestic realm based on their historical claim and their policy of reunification of all Chinese lands.¹⁵⁵ However, Fravel points out that China's position is not always about meeting challenges head on. Even when they are confronted with a challenge to their territorial position, regime security takes precedence over territory, their actions in the wake of events such as the invasion of Tibet, the Great Leap Forward, Tiananmen Square and violence against the separatists in Xinjiang demonstrate this commitment.¹⁵⁶ Fravel also points out that China is employing a long-term strategy, particularly in the South China Sea, in which it is attempting to ensure that other countries are unable to consolidate any claims they made while China works to consolidate theirs.¹⁵⁷ The view that China is pursuing this strict interpretation of sovereignty is further seen when Saul mentions that China is not a part of the Mekong River Commission. This has allowed China to pursue exploitation of the river without regard for the downstream states.

¹⁵⁵ Buhi, Jason. "FOREIGN POLICY AND THE CHINESE CONSTITUTIONS DURING THE HU JINTAO ADMINISTRATION." *Boston College International & Comparative Law Review* 37, no. 2 (Spring 2014): 262-268

¹⁵⁶ Fravel, M. Taylor. "Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes." *International Security* 30, no. 2 (2005): 81.

¹⁵⁷ Fravel, Taylor. "China's Strategy in the South China Sea." *Contemporary Southeast Asia: A Journal of International & Strategic Affairs* 33, no. 3 (December 2011): 313.

Furthermore, when challenged on the issue, Chinese officials states that the manner in which they exploit their water resources is a matter of sovereignty.

Chinese Oil Disputes in the South China Sea

One more high visibility disputes that China has been having is over the oil and natural gas fields in the South China Sea. There is no current governing body and though there have been talks about joint development of the oil and gas fields between China and the other nations in the region, there has been little to no action in the area. This lack of action may in part be due to the fact that, other than China, the other countries in the region lack the necessary technology to conduct deep water drilling necessary to exploit these resources.

China has made offers in the past to begin conducting joint exploitation of the oil and natural resources in the South China Sea, however there was no time frame given, and given the fact that there seems to be no effort on China's part to conduct this joint exploitation, it has come to be viewed as diplomatic deception.¹⁵⁸ China's offers for joint development have often involved efforts to reinforce their own sovereignty. Often, their view of joint development involves development of resources that are on the continental shelf of the other nation, but only after they have recognized China's sovereignty over the area, thus reinforcing their territorial claims.¹⁵⁹ China has also used threats to undermine the ability of the other countries, particularly Vietnam, to conduct partnering operations

¹⁵⁸ Leszek, Buszynski, and Isakandar Sazlan. "Maritime Claims and Energy Cooperation in the South China Sea." *Contemporary Southeast Asia: A Journal of International & Strategic Affairs* 29, no. 1 (April 2007): 153

¹⁵⁹ Valencia, Mark J., Van Dyke Jon M., and Noel A. Ludwig. *Sharing the Resources of the South China Sea*. The Hague: M. Nijhoff Publishers, 1997: 77.

with foreign companies, thus leaving them as the only alternative, which would require a statement that would reinforce their territorial claims.¹⁶⁰ This aggressive stance that China has taken, using their historical claims and making requirements that other countries acknowledge their sovereignty as part of entering into a joint development agreement, seeks to deny the other countries in the South China Sea the ability to exploit the oil and natural gas fields that are present there, while enabling China to conduct unilateral development.

Chinese Oil Disputes in the East China Sea

Along with South China Sea, one of China's more visible disputes is with Japan in the East China Sea. Much of this dispute is centered around the competing claims the two countries have on the Senkaku/Diaoyutai Islands. However, in recent years the two countries have come into conflict over the rights to exploit the oil fields in the East China Sea. Part of this conflict stems from the differing methods used by each country to determine the extent of their Exclusive Economic Zone. Japan uses the Median Line while China claims the natural prolongation of its land territory.¹⁶¹ Joint development of the gas fields in this area began in 2004 after Japan filed a claim against Chinese drilling in the Chunxiao gas fields, citing that the drilling could extract hydrocarbon resources from the Japanese side of the Exclusive Economic Zone.¹⁶² After a period of heightened tensions, which included a deployment of Chinese warships to the area in the wake of the

¹⁶⁰ "China Uses Deep-Sea Oil Exploration to Push Its Maritime Claims." *Stratfor Analysis* 11. *Business Source Complete*, EBSCOhost (accessed August 17, 2014).

¹⁶¹ Kim, Suk Kyoan. "China and Japan Maritime Disputes in the East China Sea: A Note on Recent Developments." *Ocean Development & International Law* 43, no. 3 (Summer 2012): 297

¹⁶² Ibid: 298

Japanese government granting a drilling permit near the oil field, the two sides came to an agreement called the “Principled Consensus on the East China Sea Issue.”¹⁶³ The “Consensus” involves a three part process that begins with the two sides agreeing to a joint development project and then takes them through the joint development of a field near the Longjing Field and concludes with China allowing Japanese participation in the development on the Chunxiao gas field.¹⁶⁴

This agreement has been plagued by issues and much of the follow-on negotiations need to take place have not. The first of these issues was the arrest of a Chinese trawler captain who collided with a Japanese patrol boat off of the Senkaku Islands, this served to increase tensions between the two countries.¹⁶⁵ The next source of tension came when China began exploitation of the Tianwaitian field, despite Japanese objections which stated that the “Consensus” had called for a halt to all unilateral development.¹⁶⁶ There also been a disagreement between the two countries on Part III of the consensus, in which China views the joint development of the Chunxiao field as an opportunity for Japanese companies to invest in the development of the field, not actually participate. A key reason behind China's reasoning was their continued claim of sovereignty over the East China Sea.¹⁶⁷

¹⁶³ Kim, Suk Kyoan. "China and Japan Maritime Disputes in the East China Sea: A Note on Recent Developments." *Ocean Development & International Law* 43, no. 3 (Summer 2012): 299

¹⁶⁴ Ibid: 299

¹⁶⁵ Ibid: 300

¹⁶⁶ Ibid: 300

¹⁶⁷ "Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on June 17, 2008." Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on June 17, 2008. June 17, 2008. Accessed August 17, 2014. <http://www.chinaconsulatesf.org/eng/xw/fyrth/t448663.htm>.

Unlike some of China's other resources disputes, their dealings with the Japanese are less one-sided. However, they still use their claims of sovereignty in an attempt to unilaterally exploit the resources, despite agreements for joint exploitation.

Chinese Fishing Disputes in the South China Sea

As with their conflicts over oil in the South China Sea, China's disputes with the countries of the ASEAN over fishing are based primarily on their claim of the entirety of the South China Sea based on historic claim.

In this case, China's primary goal is to enforce its fishing laws throughout the South China Sea. This is done primarily through Hainan's legislature which is responsible for administering two-thirds of China's maritime territory. The territory over which Hainan has jurisdiction has been kept intentionally vague, but maps show their boundaries intersecting the 9-Dash-Line, thus leading people to believe that this jurisdiction extends over the entire South China Sea.¹⁶⁸ A major way that China enforces its will on the South China Sea is their annual fishing ban in certain areas. They have also worked to create a civilian law enforcement presence in the area to enforce these laws, though this is backed by the People Liberation Army Navy, to ensure that countries attempting to violate the laws can not resort to escalation.¹⁶⁹ The creation of this law enforcement capability has resulted in the arrest of fishers from ASEAN nations and the confiscation of equipment.

¹⁶⁸ Kardon, Isaac. "Hainan Revises Fishing Regulations in the South China Sea." *China Brief* 14, no. 2 (January 24, 2014): 5

¹⁶⁹ Dutton, Peter A. "China's Maritime Disputes in the South and East China Seas." *Naval War College Review* 67, no. 3 (Summer 2014): 11

In order to try to curb China's aggressive behavior and promote security in the South China Sea, the ASEAN and China signed the Declaration on the Code of Conduct of the Parties in the South China Sea in 2002.¹⁷⁰ However, calls by ASEAN nations for responses to aggressive Chinese actions have not been successful in getting a response from China.¹⁷¹

Despite their entry into an international agreement, China's dealings in regards to fishing in the South China Sea show their policy of irredentism. They are backing their historical claim with law enforcement efforts in an attempt to keep this out of the foreign policy realm and to deal with this as a domestic issue. This shows that they intend to keep full sovereign control over these resources and are unlikely to take part in efforts to jointly exploit the fisheries.

Mekong River Dispute

The Mekong River has its headwaters in China and crosses through five other countries (Myanmar, Laos, Cambodia, Thailand and Vietnam. Of these four countries, four have entered into Mekong River Commission, a loose, consultative body designed to bring these nations together in their plans for the river.¹⁷² However, this institution is considered to be weak for two primary reasons, one is that the institution has no power to prevent states from acting in a unilateral manner and the second being that not all of the

¹⁷⁰ Shicun, W. U., and R. E. N. Hauifeng. "More Than a Declaration: A Commentary on the Background and the Significance of the Declaration on the Conduct of the Parties in the South China Sea." *Chinese Journal of International Law* 2, no. 1 (2003): 318-319

¹⁷¹ George, Mary. "Fisheries Protections in the Context of the Geo-Political Tensions in the South China Sea." *Journal of Maritime Law & Commerce* 43, no. 1 (January 2012): 102

¹⁷² Pearse-Smith, Scott W.D. "'Water War' in the Mekong Basin?" *Asia Pacific Viewpoint* 53, no. 2 (August 2012): 153

riparian states are members, this includes China, the most powerful of the nations and the nation that contains the headwaters.¹⁷³ Because China is not a member, they have only agreed to provide hydrological data to the members of the Mekong River Commission.¹⁷⁴ Much as with the other instances of China sharing resources with other countries, China refuses to cooperate with the other nations. It prefers to treat In the case of the Mekong River, China has adopted the Harmon doctrine, a doctrine that states that upstream states have absolute sovereignty over the water while it is within their territory and that downstream states have no right to object to the usage by upstream states, to include diverting most any amount of water it sees fit, and that the government of the downstream state has no right to object.¹⁷⁵¹⁷⁶ China's adoption of this can be seen in its actions. Firstly, it's communications with the lower countries on the Mekong are poor and this offers the lower countries little opportunity to address concerns that they may have with Chinese projects on the river.¹⁷⁷ Second, their develop plans are treated only as a national issue and only address the effects that will happen within Chinese borders.¹⁷⁸ Finally, at this point China is the only country to have dammed the main flow of the

¹⁷³ Pearse-Smith, Scott W.D. "'Water War' in the Mekong Basin?" *Asia Pacific Viewpoint* 53, no. 2 (August 2012): 153

¹⁷⁴ "Mekong River Commission." MRC Receives First Notification of Mainstream Mekong Project ». July 29, 2009. Accessed August 17, 2014. <http://www.mrcmekong.org/news-and-events/news/china-re-affirms-commitment-to-mekong-lancang-cooperation-and-sharing-information/>

¹⁷⁵ Landberg, Sophie. "Sustainable Development of Water Resources in the Mekong River Basin: Legal and Policy Implications of Dams in the Regional Context." *Journal of East Asia & International Law* 5, no. 1 (Spring 2012): 240

¹⁷⁶ McCaffrey, Stephen C. "The Harmon Doctrine One Hundred Years Later: Buried, Not Praised." *Natural Resources Journal* 36 (1996): 965

¹⁷⁷ Goh, E. (2004). China in the Mekong River Basin: The regional security implications of resource development on the Lancang Jiang. (RSIS Working Paper, No. 69). Singapore: Nanyang Technological University, 10

¹⁷⁸ Ibid, 11

Mekong, with plans for further damming in order to create a cascade of up to 8 dams for hydro-electric power, and are considering a project to redirect some of the waters from the Mekong into the Yangtze River.¹⁷⁹¹⁸⁰ These development projects have been done with little inquiry into the effects it will have to downstream nations.¹⁸¹ This has caused concerns among many of countries downstream of China. This has led several leaders to call for greater cooperation, particularly Vietnam and Cambodia. In addressing the Second Greater Mekong Sub-region Summit, the Vietnamese Foreign Minister stated that, "Overall exploitation of the Mekong river basin needs to take into account the legitimate interests of the countries in the region and should not compromise the interests of those countries situated at the lower part of the basin."¹⁸²

Though there are other sources of tension from planned development projects on the Mekong River, China's plans have caused the most concern and tensions. China has worked to effectively nationalize the issue of their development projects in an attempt to marginalize the concerns of the other riparian states. Driven by their subscription to the

¹⁷⁹ *STRATEGIC ENVIRONMENTAL ASSESSMENT OF HYDRO MRC Strategic Environmental Assessment (SEA) of Hydropower on the Mekong Mainstream: Summary of the Final Report*. Report. Hanoi, Viet Nam: ICEM, 2010

¹⁸⁰ Cronin, Richard P. "Testimony before Senate Foreign Relations Hearing on Water and Security in Southeast Asia | Analysis | The Stimson Center | Pragmatic Steps for Global Security." Testimony before Senate Foreign Relations Hearing on Water and Security in Southeast Asia | Analysis | The Stimson Center | Pragmatic Steps for Global Security. September 23, 2010. Accessed August 16, 2014. <http://www.stimson.org/summaries/testimony-before-senate-foreign-relations-hearing-on-water-and-security-in-southeast-asia/>

¹⁸¹ Pearse-Smith, Scott W.D. "'Water War' in the Mekong Basin?" *Asia Pacific Viewpoint* 53, no. 2 (August 2012): 153

¹⁸² "Vietnamese PM Addresses Second GMS Summit." Vietnam Embassy. July 05, 2005. Accessed August 16, 2014. http://3A%2F%2Fwww.vietnamembassy-belarus.org%2Fvnemb.vn%2Ftin_hddn%2Fns050706090918.

absolute sovereignty that is prescribed in the Harmon Doctrine, this is likely to remain a source of tension between China and the downstream nations of the Mekong River.

Brahmaputra River Dispute

The Brahmaputra River is another major river that has its headwaters in Tibet. The Chinese share this river with the India and Bangladesh. This river has been identified as another possible addition to the North-South Water Diversion Project, which is a project that the Chinese government has undertaken to divert the Yangtze River to the north at three different points.¹⁸³

Much like their dealings with the counties of the Mekong River Commission, China views any projects that they undertake on the river as a matter of national sovereignty and refuses to consult or cooperate with the downstream nations. This is most readily seen in the incident where India discovered the construction of a Chinese construction of a dam on the Brahmaputra at Zhangmu. This presents a major problem for India, as it draws nearly 30 percent of its power from the Brahmaputra.¹⁸⁴ Currently the only agreement between the two countries pertaining to this river is an “expert-level-agreement” to share flood data between the two countries, an agreement that India has attempted to expand, but has had no luck in doing so.¹⁸⁵

As with Mekong River, China's strict views on the status of resources is seen in its dealings on Brahmaputra River. Their own issues with water scarcity are viewed as

¹⁸³ Khalid, Iram, Asia Mukhtar, and Zanib Ahmed. "Water Scarcity in South Asia: A Potential Conflict of Future Decades." *Journal of Political Studies* 21, no. 1 (2014): 83

¹⁸⁴ Ibid: 83

¹⁸⁵ Ibid: 83

trumping the needs of downstream nations. Thus this view is fueling the disputes that China is having with India over utilization of the Brahmaputra River.

Conclusion

These case studies demonstrate that there is a clear relationship between a nation's views on sovereignty and their behavior with regard to transboundary resource disputes. Most nations, regardless of their differences in their economic and /or military power have worked ensure equitably opportunity for other nations, with whom they share resources, to exploit their resources. This view has now been codified in several United Nations Conventions, the most notable of which is the United Nations Convention on the Law of the Sea. However, China's actions, stemming from their views on sovereignty, stand out in stark contrast to the rest of the world and are now in violation of international law. Despite the softened approach that China has taken to dealing with its neighbors and its attempts to appear neighborly, China routinely violates any agreements nations and continues to assert that it has rights to exploit any resources within its territory as it sees fit and without regard to the effect it may have on other nations ability to exploit their resources or receive their fair share of these shared resources.

Despite this very strict interpretation of its rights, and by extension the rights of other nations to exert sovereignty over the natural resources within its territory, China has taken a different view in regard to the Arctic. Unlike with the South and East China Seas, some in China are pushing for an interpretation of the Arctic issue to define the Arctic in terms of a “common heritage of all humankind,” which would mean that all resources

found would be equitably distributed.¹⁸⁶ They have also made calls for the A5 Nations (Russia, Norway, Canada, United States and Denmark) to balance their economic interests with those of the international community.¹⁸⁷ This however runs counter to their current policy with regards to territorial claims and the rights of a country to exploit the resources within their territory. This difference in policy was identified by Wright as a “thorny diplomatic quandary” because of the nature of their own claims.¹⁸⁸ Unfortunately for them, their current position is likely untenable because it would at best weaken, if not fully negate, their claims within the South and East China Seas, which they regard as a serious strategic issue. This could lead to a softening of their views toward the Arctic and lead them to either deepen ties with the A5 Nations or to attempt to exploit fissures within the nations, such as the conflict over the Northwest Passage between Canada and the United States, to forestall any decisions that they would not regard as favorable to Chinese interests.

This situation could become exacerbated by China's role in the world. As an emerging power, there are doubtlessly other nations examining China's actions to gauge their own behavior as they attempt to emerge as regional and international powers. If China's view on actions, based on their absolutist view on sovereignty, are allowed to continue unchecked, this could lead other nations to believe that they should adopt this view and the behaviors that come with it. Though is not a guaranteed recipe for future conflicts, as

¹⁸⁶ Wright, David Curtis, and Naval War College (U.S.). China Maritime Studies Institute. *The Dragon Eyes the Top of the World: Arctic Policy Debate and Discussion in China*. Newport, R.I.: U.S. Naval War College, China Maritime Studies Institute, 2011: 7.

¹⁸⁷ Ibid: 37.

¹⁸⁸ Ibid: 37.

we have seen with China, it could increase tensions in any region where a state adopts this view of sovereignty.

Chapter 3: Investigating Chinese Aid and Its Relationship to Natural Resources in

Africa

Introduction

Since 1994, China has increasingly become a larger player in providing development aid to countries around the world, particularly in Africa. They currently only play a small role in the total amount of development aid that is being distributed, however, Chinese aid is now presenting a challenge to the aid and aid policies of Organization for Economic Cooperation and Development (OECD) that has many people worried. China's aid policies have been accused of serving a wide range of functions from propping up autocratic regimes to subverting policies of good governance.

The Chinese, due to their views on sovereignty, do not require their recipient countries to make institutional changes as a requirement for receiving development assistance from them. However, many people in the West have begun to view the Chinese model with suspicion. In many cases the countries targeted for Chinese aid are resource rich, particularly in oil. This has led to instances, such as with Chinese aid to Angola, in which the Chinese government received repayment for loans via mineral or resource repayments, or preferential rights given to Chinese companies to exploit the recipient country's natural resources. This apparent targeting of resource-rich countries and their inclusion of natural resources and other benefits to the government have lead some in the West to compare Chinese aid programs with imperialism. This is denied by the Chinese who insist that they are working to foster South-South cooperation.

In this paper I will begin by defining what China considers development aid and its contrasts to development aid provided by the OECD countries. Then, using China's own definition of what it considers development aid, I will examine whether or not China's aid is truly targeted toward gaining resource concessions from resource-rich countries.

Literature Review

Because of the emerging and somewhat controversial nature of Chinese developmental aid, most people view it in relation to the developmental aid provided by the OECD. The OECD defines developmental aid as financing targeted at fostering economic growth that is concessional in nature and includes a grant of at least 25 percent.¹⁸⁹ In many cases, the OECD's developmental aid is also tied to either requested policy changes targeted at improving governance or human rights.¹⁹⁰ Lastly, OECD developmental aid normally comes in the form of direct budget support, poverty reduction or sector-wide approaches.¹⁹¹

For the most part, Chinese development aid shares the basic characteristics of OECD development aid.

China's developmental aid is also concessional in nature and includes grants, zero-interest loans and concessional (low, fixed interest) loans.¹⁹² There are, however some rather

¹⁸⁹ "OECD Glossary of Statistical Terms - Official Development Assistance (ODA) Definition." OECD Glossary of Statistical Terms - Official Development Assistance (ODA) Definition. August 28, 2003.

¹⁹⁰ Bräutigam, Deborah. "Aid 'With Chinese Characteristics': Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime. *"Journal of International Development* 23, no. 5 (2011): 752-64.

¹⁹¹ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 860.

¹⁹² Bräutigam, Deborah. "Aid 'With Chinese Characteristics': Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime. *"Journal of International Development* 23, no. 5 (2011): 754.

stark contrasts. The Chinese do not use the same system for classifying their development aid and therefore include aid that goes towards joint ventures between Chinese companies and those in developing nations and certain forms of military aid.¹⁹³ Chinese aid projects also have a requirement for mutual benefit, meaning that an aid project will have a Chinese company assigned to it and that company will be encouraged to import as much of its resources and labor from China as possible.¹⁹⁴ The final difference between Chinese aid and that of the OECD is that Chinese aid is generally targeted at specific projects vice the large sector-wide programs of the OECD.¹⁹⁵ These differences in the developmental aid programs of the OECD and China have led many to question whether current Chinese development aid should be classified as development aid.¹⁹⁶

Despite the question of whether their development aid truly meets the definition of true development aid, the Chinese classify it as such. But this still leaves one of the biggest questions concerning their aid left to answer, are they using their aid as a way to obtain natural resources from developing countries? Studies on this question have been divided in their findings, with some confirming the fact that Chinese development aid is targeted at extracting natural resources and others finding that their aid is either not targeted specifically at extracting resources or that other factors play a larger role in determining who receives Chinese development aid.

¹⁹³ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 862.

¹⁹⁴ Ibid: 863-64.

¹⁹⁵ Ibid: 860.

¹⁹⁶ Bräutigam, Deborah. "Aid 'With Chinese Characteristics': Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime." *Journal of International Development* 23, no. 5 (2011): 753.

The theory that Chinese developmental aid is being used to target resources has garnered a number of supporters. Yun Sun points to the fact that Chinese “tied aid,” which is often combined with direct investments, generally lead to either benefits for Chinese companies who will receive contracts as part of the deal or will be backed by the natural resources of the recipient.¹⁹⁷

Despite this evidence, there are many who believe that Chinese developmental aid is not targeted at extracting resources, but that if it is targeted; natural resources are not the primary driver behind which countries China selects to give developmental aid. Dreher and Fuchs find that, though economic interests play a certain role in China's selection of recipient countries, political factors play a larger role in the countries they select.¹⁹⁸

Particular factors they point out are that countries that have similar voting patterns to China and countries that don't officially recognize Taiwan receive larger aid shares.¹⁹⁹ In her book “The Gift of the Dragon,” Bräutigam states that all countries in Sub-Saharan Africa receive some form of developmental aid under the “One China” policy.²⁰⁰ Unlike Yun Sun, she finds that there is no preferential treatment given to resource-rich countries.²⁰¹ Though she goes on to admit that resources do play into Chinese aid, China does not view this as an opportunity to extract resources as it does an opportunity to create mutually beneficial business.²⁰²

¹⁹⁷ Sun, Yun. "China's Aid to Africa: Monster or Messiah?" The Brookings Institution. February 2014.

¹⁹⁸ Dreher, Axel; Fuchs, Andreas (2011): Rogue Aid? The Determinants of China's Aid Allocation, Courant Research Centre: Poverty, Equity and Growth – Discussion Papers, No. 93: 27.

¹⁹⁹ Ibid: 28.

²⁰⁰ Brautigam, Deborah. *The Dragon's Gift: The Real Story of China in Africa*. Oxford: Oxford University Press, 2009, 278.

²⁰¹ Ibid, 279.

²⁰² Ibid, 279.

It is clear to see that there are multiple and possibly interrelated factors that determine which countries receive Chinese developmental aid and how much they receive. The role of resources is particularly troubling because of the fact that resource exports account for the majority of the gross domestic product (GDP) for some countries. Further research into how these factors are related and which one truly plays the largest role will be needed to make a final determination.

Hypothesis

China has worked to portray their programs for development aid as superior to those of Western aid donors because of their respect for the sovereignty of the recipient nation. Though their programs do respect the recipient country's sovereignty by refusing to impose requirements that would require changes to the governing institutions of the recipient country, Chinese development aid programs in Africa appear to be a mechanism for gaining concessions for natural resources from African nations.

Methodology

Because of the differences in Chinese and Western aid, and to remove the question of what is and is not aid, I will be including any developmental aid that meets Chinese standards for being classified as developmental aid. I will then examine China's aid relationships with five African countries, Angola, the Democratic Republic of the Congo, Sudan and South Sudan, Ghana and Nigeria and all have a body of literature concerning the nature of China's aid involvement in the country. Of these countries, Angola, Nigeria and Sudan possess oil and the Democratic Republic of the Congo possesses several minerals considered strategic, however Ghana can act as a control against these because it

is not classified as resource rich. I will then run each country's aid packages through a series of tests. First, I will examine whether the country is regarded as being resource-rich, and if so what is their chief resource. Next, I will examine whether there were resource-related repayment or concessions included in the negotiation for the aid project. Resource-related concessions will instances where a recipient country's natural resources were used as collateral, repayment for a loan or where Chinese companies received preferential treatment in being allowed to exploit the recipient country's natural resources. Countries who meet both of these criteria will be considered evidence supporting the hypothesis and if four or more of these countries meet both of the requirements, I will accept the hypothesis.

Data

Angola

Angola is currently one of the fastest growing economies in Sub-Saharan Africa. Much of this economic boom is due to the Angolan oil industry. In 2014, Angola produced 1.75 million barrels per day (bpd) of crude and other liquids, with oil accounting for 1.75 million bpd in 2014, making it second only to Nigeria in Sub-Saharan Africa.²⁰³ Of the 1.75 million bpd produced over that time 1.65 million bpd were exported with China accounting for 49 percent of the share.²⁰⁴ Oil and natural gas account for nearly 52

²⁰³ "U.S. Energy Information Administration - EIA - Independent Statistics and Analysis." *Angola*. N.p., 20 Mar. 2015. Web. 02 May 2015.

²⁰⁴ *Ibid*

percent of their economy²⁰⁵ and accounted for around 97 percent of Angola's income from exports in 2012.²⁰⁶

China's development relationship with Angola began in 2003 in the wake of the Angolan Civil War and has become so extensive that it is often referred to as the "Angola Model."²⁰⁷ Initially, Angola had sought an International Monetary Fund (IMF) loan.

However, the two sides were unable to agree on the terms and the negotiations fell apart because the Angolan government did not want to accept the conditions put on the loans by the IMF.²⁰⁸ At that point, China stepped in and between 2003 and 2010 offered Angola \$10 billion in low interest loans with reasonable repayment schedules for their reconstruction and development at a rate of Libor + 1.5%.²⁰⁹²¹⁰ These loans were offered to Angola with fewer conditions and were backed by Angolan oil.²¹¹ This loan guarantees China a supply of 10,000 bpd from Angola as part of their repayment.²¹² In addition to the obvious oil backing of the loan, there is also a certain amount of speculation that Chinese oil companies have received preferential treatment in their bids to exploit an Angolan oil fields.²¹³ The most glaring example of this is the purchase of 50 percent of Block 18 by

²⁰⁵ "ECONOMY." *Background Notes On Countries of the World: Republic Of Angola* (February 2005): 8.

²⁰⁶ "U.S. Energy Information Administration - EIA - Independent Statistics and Analysis." *Angola*. N.p., 20 Mar. 2015. Web. 02 May 2015.

²⁰⁷ Sun, Yun. "China's Aid to Africa: Monster or Messiah?" The Brookings Institution. February 2014.

²⁰⁸ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 868.

²⁰⁹ Executive Research Associates Ltd. 2009. China in Africa: A Strategic Overview. Report prepared for IDE-JETRO (Institute for Developing Economies). Japan External Trade Organization: Tokyo.

http://www.ide.go.jp/English/Data/Africa_file/Manualreport/pdf/china_all.pdf

²¹⁰ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 868.

²¹¹ Ibid: 868.

²¹² Ibid: 868.

²¹³ Bräutigam, Deborah. "Aid 'With Chinese Characteristics': Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime." *Journal of International Development* 23, no. 5 (2011): 759.

Sinopec, which corresponded with the release of the first tranche of Angola's development aid and overrode previous purchase agreements with American and Indian oil companies.²¹⁴

In looking at the situation in Angola, it appears that China's developmental aid is targeted at aiding it in extracting Angolan oil. Angola is an oil rich country, thus meeting the first criteria. Along with this, the Chinese have ensured a 10,000 bpd supply from Angola as part of the backing for their development aid.

Democratic Republic of the Congo

Despite the fact that it is one of the poorest countries in the world, the Democratic Republic of the Congo (D.R. Congo) is one of the richest in natural resources. Currently, agriculture remains the primary industry, due in large part to mismanagement by mining companies.²¹⁵ However, current estimates, based on a United Nations Environment Program (UNEP) report, are that there could be up to \$24 trillion worth of copper, cobalt and coltran, which are all important resources of information based economies.²¹⁶ D.R. Congo is estimated to have 10 percent of the world's supply of copper and one-third of the supply of cobalt.²¹⁷

²¹⁴ Corkin, Lucy. "Uneasy Allies: China's Evolving Relations with Angola." *Journal of Contemporary African Studies* 29, no. 2 (2011): 169-80.

²¹⁵ 2008. "Background Note: Democratic Republic of the Congo. (Cover story)." *Background Notes On Countries of the World: Democratic Republic Of Congo* 1.

²¹⁶ Meyer, Nathan. "Can China's 'Deal of the Century' Save Congo? | World Policy Institute." Can China's 'Deal of the Century' Save Congo? | World Policy Institute. July 20, 2012

²¹⁷ Moran, Theodore H. *China's Strategy to Secure Natural Resources: Risks, Dangers, and Opportunities*. Washington, DC: Peterson Institute for International Economics, 2010: 21.

As of 2007, when it was originally signed,²¹⁸ China's aid deal with D.R. Congo is its largest aid project on the continent of Africa to date.²¹⁹ As part of this developmental aid deal, the Chinese have pledged \$6 billion to D.R. Congo for infrastructure projects that will result in the construction of new roads, railways, hospitals and universities.²²⁰ As repayment for the development loans, China is guaranteed 10 million tons of copper and 400,000 tons of cobalt.²²¹ Additionally, the profits from the mine, which is a joint venture with two Chinese companies, will be used to pay off the loan.²²² Many view this project as unfairly benefiting China, because up to half of the wealth generated will belong to China.²²³

Despite the objections of many outside of the deal, China classifies this as aid and is in keeping with their requirement of mutual benefit. D.R. Congo is clearly a resource rich country that possesses resources that would be of great value to China. Their aid deal with D.R. Congo clearly uses resources as a means of repaying that loan and the long-term nature of the joint development will ensure a supply of these resources into the future.

Sudan and South Sudan

²¹⁸ Jansson, Johanna. "China - DRC Sicomines Deal Back on Track Read the Original Article on Theafricareport.com : China - DRC Sicomines Deal Back on Track." *The Africa Report*. The Africa Report, 04 Aug.

²¹⁹ Whewell, Tim. "China to Seal \$9bn DR Congo Deal." BBC News. April 14, 2008

²²⁰ Ibid

²²¹ Ibid

²²² Ibid

²²³ Moran, Theodore H. *China's Strategy to Secure Natural Resources: Risks, Dangers, and Opportunities*. Washington, DC: Peterson Institute for International Economics, 2010: 21.

Sudan and South Sudan, if considered combined, are the third largest producer of oil in Sub-Saharan Africa, behind Nigeria and Angola.²²⁴ They are also suspected of containing significant mineral wealth, but this has not been confirmed due to a lack in exploration.²²⁵ Sudan's economy has historically been based on agriculture, though oil has become an increasingly important part of the economy. As of January 2014, there are a projected 3.5 billion barrels of reserves in South Sudan with an additional 1.5 billion barrels in Sudan.²²⁶ At its peak in 2011 the combined fields produced 337,000 bpd, however the fields have been well below that level since and in 2013 produced 133,000 bpd for export, 86 percent of which went to China, accounting for 2 percent of its oil imports that year.²²⁷ In 2012, revenues from oil exports accounted for 27 percent of Sudan's total government revenues, though that was down from 60 percent the two preceding years, however, it accounted for 98 percent of South Sudan's revenues following its independence.²²⁸ This shift has caused growth rates of up to 9 percent, which makes it one of the fastest growing economies in the region.²²⁹

In terms of development aid, China has had a long standing relationship with Sudan. In the wake of the civil war, China has worked to maintain relationships with both North

²²⁴ Nour, Samia Satti Osman Mohamed. *Assessment of Effectiveness of China Aid in Financing Development in Sudan*. Working paper no. 2011-005. Maastricht: United Nations University – Maastricht Economic and Social Research and Training Centre on Innovation and Technology, 2011: 2.

²²⁵ "Background Note: Sudan." *Background Notes On Countries of the World: Republic of the Sudan* (July 2008): 1.

²²⁶ "Independent Statistics and Analysis." *Sudan and South Sudan*. U.S. Energy Information Administration - EIA, 03 Sept. 2014.

²²⁷ Ibid

²²⁸ Ibid

²²⁹ Nour, Samia Satti Osman Mohamed. *Assessment of Effectiveness of China Aid in Financing Development in Sudan*. Working paper no. 2011-005. Maastricht: United Nations University – Maastricht Economic and Social Research and Training Centre on Innovation and Technology, 2011: 2.

and South Sudan. The most aid China has agreed is an \$8 billion development deal with South Sudan, which acquired much of the oil when the two countries split. The aid will provide money for roads, hydroelectric power and agriculture and may include the construction of a new pipeline that does not go through North Sudan.²³⁰ Past development aid deals, predating the split of the two countries, were targeted at similar projects to the South Sudan deal, such as roads and electricity and required that petroleum guarantees be used as a means of providing security on the loans provided.²³¹

As with Angola, China's development aid to North and South Sudan appears to be targeted at gaining concessions for Sudanese oil. These oil fields place them as one of the most important suppliers in Sub-Saharan Africa despite the fact that they are only classified as modest in size. China's past and present deals have targeted the oil rich South and have specifically required that oil be used as a guarantee in the past to ensure their receipt of this oil.

Ghana

Unlike many West African countries, Ghana has a rich and diverse set of natural resources that includes gold, diamonds, manganese and bauxite.²³² Though none of these are considered strategic resources, Ghana may become the focus of increased attention as they begin to increase production in the Jubilee oil field, which was discovered in 2007 and is operating at a production capacity of 99,000 bpd as of 2013, and seek to

²³⁰ "South Sudan Awaits Big China Loan." BBC News. April 28, 2012. Accessed December 06, 2014. <http://www.bbc.com/news/world-africa-17883321>.

²³¹ Nour, Samia Satti Osman Mohamed. *Assessment of Effectiveness of China Aid in Financing Development in Sudan*. Working paper no. 2011-005. Maastricht: United Nations University – Maastricht Economic and Social Research and Training Centre on Innovation and Technology, 2011: 8.

²³² 2008. "PROFILE." *Background Notes On Countries Of The World: Republic Of Ghana*: 1.

commercialize the oil production there.²³³ Despite these resources, Ghana's economy is primarily agricultural, comprising 55 percent of the country's gross domestic product (GDP) with cash crops amounting to approximately 33 percent of Ghana's export revenue.²³⁴

Despite the lack of strategic resources, China has provided development aid to Ghana. It is noted, however, that China's role in development in Ghana is minor compared to other aid donors.²³⁵ The two governments have signed 6 deals which have led to development projects in Ghana ranging from improvements to the telecommunications infrastructure, to construction of the Bui Hydroelectric Dam, to construction of landing sites in fishing communities.²³⁶ Though not all of the projects taken on by the Chinese involved resource concessions of one form or another, the Bui hydroelectric dam, where construction began in January 2008,²³⁷ and fishing projects did. As part of the repayment plan for the hydroelectric dam, Ghana was required to sell cocoa to China at market value as part of their effort to increase chocolate consumption in China.²³⁸ China's construction of the landing sites has also lead to resource-related benefits. These projects have increased

²³³ "Independent Statistics and Analysis." *Ghana*. U.S. Energy Information Administration - EIA, 30 May 2013.

²³⁴ 2008. "PROFILE." *Background Notes On Countries Of The World: Republic Of Ghana*: 1.

²³⁵ Davies, Martyn, Hannah Edinger, Nastasya Tay, and Sanusha Naidu. "How China Delivers Development Assistance to Africa." *How China Delivers Development Assistance to Africa*, February 2008.

²³⁶ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 872.

²³⁷ "Bui Dam Hydroelectricity Project, Bui National Park, Ghana." *Bui Dam Hydroelectricity Project, Bui National Park*.

²³⁸ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 872.

their interest in the country's fishing industry which has therefore opened the door for Chinese companies and the ability to conduct off-shore exploration.²³⁹

China's development aid to Ghana would suggest that they are not targeting resources. Though Ghana has a diverse range of resources, it is still regarded as resource poor and none of its resources are considered strategic. However, China has used some of its development projects in Ghana to receive resources concessions, cocoa and fish. The discovery of oil will make Ghana an interesting case study in the future to gauge whether China's interest in development aid increased and if resource concessions, specifically oil, were increased.

Nigeria

Nigeria possesses the largest oil reserves in Sub-Saharan Africa. Their current oil reserves are estimated at 37 billion barrels of oil reserves as of January 2015, making Nigeria second only to Libya in projected oil reserves for an African Nation.²⁴⁰ At its peak operating capacity in 2005, they were producing 2.44 million bpd, however production has declined since then with production at 2.4 million bpd in 2014.²⁴¹ During 2014, Nigeria exported 2.05 million bpd. Its primary customers were countries in Europe and Asia, however their primary Asian customers were India and Indonesia, China's share of the market was less than 6 percent.²⁴² The oil industry accounts for

²³⁹ Tan-Mullins, May, Giles Mohan, and Marcus Power. "Redefining 'Aid' in the China-Africa Context." *Development and Change* 41, no. 5 (2010): 872.

²⁴⁰ *Country Analysis Brief: Nigeria* (n.d.): n. pag. *Country Analysis Brief: Nigeria*. U.S. Energy Information Administration - EIA - Independent Statistics and Analysis, 27 Feb. 2015.

²⁴¹ Ibid

²⁴² Ibid

approximately 98 percent of export income and 83 percent of the government's income.²⁴³

China's has had an extensive development aid program with Nigeria. In 2014, they pledged an additional \$12 billion, in the form of a line of credit which increased its total aid to \$30 billion, as part of development aid to the country for infrastructure and other projects.²⁴⁴ Much of China's aid was tied to the "Oil for Infrastructure" program of the Obasanjo administration, which began in 2006 with the signing of a Memorandum of Understanding.²⁴⁵ China's role in this program was a \$2.5 billion loan for rehabilitation of the Lagos-Kano railway system, which resulted in the rehabilitation of nearly 700 miles of track by February 2013,²⁴⁶ and a hydroelectric dam, where the president has promised in January 2015 that dredging will begin soon,²⁴⁷ for which they would receive right of first refusal on a series of oil blocks that the government was putting up for auction.²⁴⁸ As the country with the largest oil reserves in Sub-Saharan Africa, Nigeria definitely meets the criteria of being a resource-rich country, particularly because its primary resource is oil. On top of this, Nigeria ranks first amongst Sub-Saharan countries in terms of the aid it receives from China. Despite the fact that the "Oil for Infrastructure"

²⁴³ "Background Note: Nigeria." *Background Notes On Countries of the World: Nigeria* (October 2007): 1-14.

²⁴⁴ Atuanya, Patrick. "Nigeria to Benefit from \$12bn Chinese Africa Infrastructure Fund." *Business Day*. May 09, 2014

²⁴⁵ Umejei, Emeka. "Why Did China's Infrastructure for Resources Deal Fail in Nigeria?" *African Arguments*. African Arguments, 02 Sept. 2013.

²⁴⁶ "Can Nigeria's Renovated Railway Unite North and South?" *BBC News*. BBC News, 13 Feb. 2013.

²⁴⁷ Fanen Ihyongo, Jalingo. "Jonathan, Sambo to Buhari: You Lied on Mambilla Dam." *The Nation*. The Nation, 29 Jan. 2015.

²⁴⁸ Mthembu-Salter, Gregory. *Elephants, Ants and Superpowers: Nigeria's Relations with China*. Report no. 42. Johannesburg: South African Institute of International Affairs, 2009: 12.

program was a Nigerian invention, the Chinese still took part in the program as part of their foreign aid to Nigeria, thus contributing to the argument that they are using their development aid to target natural resources.

Conclusion

Contrary to what I expected to see in the hypothesis, China's aid seems to be spread throughout countries regardless of their resource-richness, as was seen with Ghana where oil was only recently discovered. Though this does not disprove the theory that China is seeking to gain resource concessions with its aid, two of the cases set the stage for further potential research into the subject. The first of these is the discovery of oil in Ghana. Given that Ghana possessed no strategic resources, prior to the discovery of its oil fields, this could offer an interesting case study to examine whether Chinese development aid to Ghana increased in the wake of the oil discovery. In much a similar way, the second potential case study would be in North and South Sudan in the event of discovery of other key strategic resources.

It does appear, however, that China does seek resource concessions from the recipient countries. These concessions come in the form of resources being used as collateral, as direct repayment for loans or in preferential treatment given to Chinese companies in bids for resources contracts. In all five of the cases seen, China sought some sort of resource concession, be it oil from Nigeria, Angola and Sudan, copper and cobalt from D.R. Congo or even cocoa from Ghana. Given the low level of development in these countries and the fact that many are dependent on their resources as their primary source of

national income, this could extreme damage to the economies, with no guarantee of growth as a result of the Chinese development projects.

China's respect for the sovereignty of other countries in the development aid program has set it up as a challenger to the Western model. Their lack of requirements for institutional reforms, unlike Western aid, appeals to many African nations who regard the West with suspicion based on their colonial past. This mistrust, which is also present outside of Africa in other former colonial nations, could allow China use this an enticement to other former colonial nations. So despite this respect for sovereignty, China's aid program is designed to ensure that it receives just as much benefit out of the aid disbursement as the recipient country. One of the chief ways that China ensures it receives these benefits is by requiring the use of natural resources as a method of repayment or collateral. In doing this, China has succeeded in turning their development aid into a method of resource capture for the natural resources of developing countries in Africa and around the world.

Conclusion

As we have seen, China has a well-defined view on sovereignty that is applied consistently throughout their dealings with other nations as well as international organizations. China has taken a classical view of sovereignty which gives a government absolute power within its borders and protection from outside interference in a country's affairs unless that aid is requested. However in a number of areas, certain aspects of this view have come into conflict with current Western views on sovereignty which promotes a view on sovereignty that promotes values such as equitable access to shared resources and the now views sovereignty through the lens of the responsibilities that a sovereign government has toward its people, as evidenced through the creation of RtoP.

Despite these differences in view, China's current strategy appears to be one in which they pursue an aggressive stance on sovereignty when the relative balance of power is in their favor. Thus we see them take an aggressive stance when dealing with other countries in the region where their only major challengers for power are India and Japan, with whom they are on a relatively equal footing. This would also explain their less aggressive actions toward many of the major international organizations, whose power could pose a threat to their view of sovereignty because these organizations hold an advantage in their relative power to China because they offer China prestige through its membership in them and because they are largely backed by the developed countries of the West. This leaves China with two possible reactions. The first is to modify their

views to more closely fit with Western views, while still working to subvert actions that they believe infringe on sovereignty. We have this behavior in their interactions with the WTO, where they have taken on the behaviors of certain major trading powers, such as the United States. The second option would be take an aggressive stance toward the Western countries and organizations as the difference in relative power shrinks. One manner of doing this would be for China to wait until they possess the relative power difference between them and the West has been essentially negated. Another avenue for this aggressive action would be for China to find common cause with other developing nations, such as Russia, India or Brazil, to further close the gap in relative power, thus allowing to at a minimum counter these new Western views or to assert their own. An example of this already exists, in which China and Russia worked together to block humanitarian intervention in Syria. Further examination of how China is reacting to Western countries and international organizations to identify whether they intend to continue their current behaviors or whether they are seeking to more actively oppose any actions they view as infringing on sovereignty. Particular care should be taken to note whether they are seeking common cause with other countries while they are taking more aggressive actions.

China will also face a major test of its views on sovereignty as more decisions are made about the Arctic. Their current policy, stating that the Arctic should be treated as a global commons, stands in stark contrast to their views toward the South and East China Seas. Continuing to hold to their policy about the Arctic will damage their positions in the South and East China Seas, however backing away from their current Arctic position will

prevent them from having a say in the manner in which the resources there are distributed. Further study will be necessary to determine if China is willing to back down from one of their most clearly stated positions, particularly one that could damage their strategic position close to home.

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